
United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

W. H. WOOLDRIDGE,
Plaintiff in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME II.
(Pages 353 to 668, Inclusive.)

Upon Writ of Error to the United States District Court
of the Territory of Alaska, Fourth Division.

Filed

SEP 23 1916

F. D. Monckton,
Clerk.

No. 2839

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

W. H. WOOLDRIDGE,
Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME II.
(Pages 353 to 668, Inclusive.)

Upon Writ of Error to the United States District Court
of the Territory of Alaska, Fourth Division.

(Testimony of J. H. Miller.)

Q. Didn't he follow you out almost immediately?

A. No. I think we were nearly to the end of the block before he came out.

Q. It was not more than a minute?

A. No. It was not any length of time. I would say it was a minute or two or three. I wouldn't be able to say that.

Q. Then you went back again?

A. Then we went back again.

Q. What time was that? [355]

A. I would imagine it was somewhere between a quarter to nine and nine o'clock. I can't say exactly.

Q. Then you saw George Herrington the next day?

A. Yes.

Q. And you had a talk with him about this plan you were going to lay in Rose's shop?

A. Yes, sir.

Q. He knew all about that?

A. No. He knew nothing of it.

Q. Didn't you tell him about it?

A. No, because I didn't know anything about it at that time.

Q. Maybe I misunderstood you. A. Yes.

Q. You say you saw George Herrington the next morning? A. Yes.

Q. Now, I intended to ask you, whether you understood it that way, whether you had a talk with him when you saw him the next day, or the next morning, about this arrangement that you had made or were going to make up at Rose's bicycle shop.

(Testimony of J. H. Miller.)

A. No. He came to me and told me—(interrupted).

Q. Never mind what he told you. You had a conversation with him?

A. I had a conversation. He reported to me in regard to the bicycle shop, that is, he gave me a report in regard to that.

Q. You got that from him?

A. I got that from him.

Q. Without quoting what he said. That is not proper testimony. [356] Then you got your information upon which you based this—what you did afterwards at the bicycle shop, from George Her-
rington. A. That is it exactly.

Q. Did you then tell him your plan of action?

A. No, sir. Because I didn't have any.

Q. You developed that later? A. Yes.

Q. Did you develop that alone, or did you develop that in consultation with Mr. Roth?

A. Absolutely alone.

Q. When was the first time that Mr. Roth knew anything about that? A. Well, I don't know.

Q. Was that before you went up there?

A. I don't know whether I reported it to him or not. To tell you the truth, I couldn't say, and wouldn't say.

Q. I understood you to say awhile ago that you consulted Mr. Roth upon questions of policy and whether or not you were going too far or if it was right that you should do these things. A. Yes.

Q. Did you consult him in regard to whether it

(Testimony of J. H. Miller.)

was all right for you to do what you did down at the Herrington house? A. Yes.

Q. Wouldn't you be likely to consult him about what you proposed to do at the bicycle shop as to whether it was legitimate and proper?

A. The action to be taken was exactly the same.
[357]

Q. And his first advice was sufficient to justify you. A. To cover all the ground, yes.

Q. And assuming that it was, you then developed in your own mind the plan of action to be adopted at the bicycle shop? A. Yes.

Q. What time of day was it that you developed the plan of action to be adopted at the bicycle shop?

A. Well, it was along during the afternoon sometime. I don't know just when. I went up and looked all around there and I saw three different places there from which a person could get near to where I wanted to get.

Q. What places were they?

A. Bill McPhee's place, Mrs Wilson's bath-house, and McDermott's store.

Q. That you could get through?

A. Where I could get near to Rose's building, near enough to hear what was going on in there, or see.

Q. Were you back through each of those places?

A. No, sir.

Q. You just went through McDermott's?

A. Yes. That is the only place I did go through.

Q. Did you tell McDermott what you were after?

A. No. Not in that way. I told McDermott that

(Testimony of J. H. Miller.)

there was a matter coming off there in connection with a reported crime, and that I wanted to use his building for the purpose of determining whether it was true or not, or words to that effect as near as I can remember. That is what I tried to imply. I didn't tell him who it was.

Q. Nor what it was? [358]

A. Nor what it was.

Q. Nor what kind of a crime it was?

A. No, sir. I don't think I did.

Q. And it was upon that representation that you got permission from Mr. McDermott to pass through his store?

A. Yes. Mr. McDermott said, "If there is anything I can do to ferret out anything, the truth of it, or anything of that kind, you can always use my place."

Q. You went back in that hallway and made an examination yourself to see what the situation was?

A. Yes, sir.

Q. As far as its adaptability for the purpose?

A. Yes.

Q. Did you cut through the paper or cloth at that time? A. No, sir.

Q. Were you looking for a place, Mr. Miller, to place this dictaphone?

A. Well, I had that in view. I had that in mind.

Q. If you could have found a suitable place you would have placed this dictaphone there?

A. Yes.

Q. But I take it that the situation from your

(Testimony of J. H. Miller.)

standpoint was just as favorable for listening as it was for—that is, without the aid of this dictaphone, as it was with it.

A. Yes. I didn't figure that I could get the receiver or receiving part of the machine that takes the sound any closer to the people than the person's ear would be.

Q. Didn't this idea occur to you: that if you were going to go into a scheme of that kind, that if you had this [359] dictaphone with a stenographer at the end of it, a man who is honest and would report what *you* heard, that you would have what was heard there and there wouldn't be any guesswork about it? Didn't that occur to you?

A. I don't know as I understand that question as you put it to me.

Q. I will make it plain. You understand the fallibility of the human mind as far as memory is concerned, don't you? A. Yes.

Q. And the ordinary man might listen to-day to a conversation and the best that he could do would be to give his ideas as to what was said. A good many men are that way.

A. But in a thing of this kind there would only be a vital part that would settle the thing one way or the other.

Q. You understand that even a man listening to a conversation in which there is one vital question, that it is very difficult and almost impossible for him to repeat the language and the words that have been used by the parties. Don't you know that?

(Testimony of J. H. Miller.)

A. Yes, sir.

Q. Didn't it occur to you that if you were going to involve a man with evidence taken in that way, if that was a legitimate way to get at it, wouldn't it be better to get his exact words, as you attempted to do with Mr. Wolcott in this other house, than to rely upon one of your deputies to remember?

A. Yes, if it had been possible to put the machine in there.

Q. Wasn't it possible? [360]

A. There was no way to get it on the inside without being discovered.

Q. Don't you know that that machine, if you had hung it up facing that point, that opening, that Mr. Berg cut in that wall where there is an inch space between the boards, as he claims—and I guess you will claim if you examine it—with paper and cloth on the other side, that that instrument there would have received every sound of the voice just as plain as if it had been right in the room?

A. No, I don't think so.

Q. Haven't you tested that out to know that that fact is true?

A. No, I don't know that that is true. I have tested it out at keyholes in the office, and it doesn't work so good.

Q. You just told the jury in answer to my question that you could put it in a drawer here of one of these desks and close the drawer, and hear our conversation out in this courtroom.

A. You must have misunderstood me if you un-

(Testimony of J. H. Miller.)

derstood that I said you could put it in a desk and close the drawer and you could hear.

Q. What did you say?

A. I said you could put it under a table, or put it in a drawer, but if you shut the sound away from that instrument it won't receive the sound any more than your ear will if you shut the sound away from your ear.

Q. Don't you know that that instrument can be placed at a hole cut in this wall here and that receiver put in there and the cloth and paper pasted over it again, and that you could hear a sound in this room almost as plain as if it was right out in the room? [361]

A. You bet it won't. You try it. I will give you a demonstration of it.

The COURT.—I think you gentlemen will have to get together and try it out.

A. Mr. Marquam and I have tried it out and I am willing to try the machine out again.

Q. I never used it for a purpose of this kind.

A. Yes it was, Mr. Marquam.

Q. Isn't it a fact that an opening through which a person could look and see what was going on in the room and hear what was said in that room, if that transmitting part of that dictaphone was placed there over that you could hear just as well as you could hear with your ear?

A. Yes, I believe you could if you don't keep the sound away from it.

(Testimony of J. H. Miller.)

Q. That condition existed there when Mr. Berg was there.

A. He found a place there, I think, Mr. Berg opened up a place so he could hear, but there was no place opened up like that when I was there.

Q. Well, what I am getting at now is, the conditions were such that it was possible for the use of that dictaphone. A. Yes, it was possible.

Q. When Mr. Berg came back to you after having listened to what went on in that room, what did he tell you about any conversation with regard to the case?

A. Why, Mr. Berg didn't report to me. When we came up, all of us, to the office, got up to the office, and I was questioning Mr. Rose, Mr. Berg stood there and said to him he said—well, I asked him, "Is there anything more you [362] remember, any more of this conversation," and he would say, "Well, I don't know as there was anything more," or something like that, and Mr. Berg would say to him "What was the conversation that you and Mr. Wooldridge had about the key hanging upon the wall."

Q. That is what I asked you about. I am asking you what Mr. Berg told you about what he himself heard.

A. He told me he had heard a lot of talk that went on there. He might have said, "I heard a lot of talk that went on there," and I think he did.

Q. With regard to any conversation between Rose and Wooldridge about keys, what did Berg say he

(Testimony of J. H. Miller.)

heard or didn't hear?

A. I don't recall what he might have said.

Q. You don't?

A. I don't recall any more than I know that he did at some time tell me about hearing them talking about the key and about other things.

Q. Just think, if you can, back to the time that Mr. Berg first talked to you and you talked with Mr. Berg, whenever that was, on the question of what the conversation between Wooldridge and Mr. Rose was in regard to keys, and what he told you.

A. I think he said something to me as we started to take Laura Herrington home. I think Mr. Berg said, "You want to get hold of Rose and hear what he has got to say, because I heard a lot of conversation there."

Q. Do you mean a lot of conversation about a key or keys, or a lot of general conversation?

A. A lot of general conversation. I can't recall just what [363] he said.

Q. To refresh your memory, didn't you tell me, Mr. Miller, some time not long ago, before I was ever connected with this case and just casually discussing the matter, that Mr. Berg didn't hear anything about the key; that he heard the word "key" mentioned, and that when Mr. Rose was down in that shop, or down in your office, and when you were questioning him and cross-questioning him, that Berg made him think from what he said that he had heard something said about the keys, and insisted upon the fact that Mr. Rose had talked about the

(Testimony of J. H. Miller.)

key? Do you remember that?

A. No. That is not the conversation.

Q. Repeat to the jury what the conversation was that you had with me.

A. As I remember, you were talking with me about this matter.

Q. It was just a casual conversation?

A. It was a conversation in which you said you were not going to enter into this case. That was the truth of the matter; that you had no intention of entering into this case, and you and I talked as we had many and many times, and you asked me something in regard to the conversation.

Q. About when was that? Fix the time.

A. I don't remember just when it was.

Q. That was about the time the indictment was returned in this case? A. Yes.

Q. And you asked me if I was going to be in this case? A. Yes. [364]

Q. And I told you that I had no idea that I would.

A. Yes. We talked and I told you Mr. Berg didn't hear everything in detail that was said between them but that he did hear enough to call Rose's attention to conversations that happened and Rose admitted that he had had the conversation and consequently came out and told it.

Q. That is exactly it?

A. That is what I told you.

Q. And as far as the keys are concerned, we heard the word "keys" mentioned, but couldn't tell what was said. A. No.

(Testimony of J. H. Miller.)

Q. But when Mr. Rose was there, his attitude and conduct towards Mr. Rose was to impress him that he *had about* the keys. Is that true?

A. I don't remember as to just what Mr. Berg said in regard to those keys. From what Mr. Berg told me, and what I got, he didn't hear all this conversation in detail and he didn't get every word of it that was said, didn't overhear it all; some parts of it he did, and some parts he didn't, but he did hear enough—(interrupted).

Q. You are getting off. I am talking about no other part of the conversation—(interrupted).

A. You are talking—(interrupted).

Q. —except about this key.

A. —about what I told you.

Q. We have had Berg on the stand. But I want your version of it, as to what Berg told you at any time as to what he heard Rose or Wooldridge say about any key.

A. I am not sure as to what Mr. Berg reported. I know he [365] talked about the keys, and about that key, about Mr. Rose saying that that was the key to the front door.

Q. That he had heard that?

A. As I recollect it. Now, I won't be—I don't want to make statements here and I am not going to make statements here that I am not absolutely sure of. I know at least here is something that may fix it better. It was in regard to that statement that Rose signed—(interrupted).

Q. I don't want anything about that, because I

(Testimony of J. H. Miller.)

never did talk with you about that, and I am not asking you about that. I want to close this key matter up so we will know where we are at.

A. All right.

Q. Let me ask you the question, and you can answer it yes or no if you can. Will you state whether or not about the time this indictment was returned, on one occasion when you and I were talking casually about the matter, that you told me that Mr. Berg had reported to you—I don't mean report—or talked to you about this matter that had come off in that place and told you that he heard while he was listening there through the partition the word "key" mentioned or spoken of but he couldn't tell what was said, and that when Mr. Rose was down in the office and he was being questioned and cross-questioned about it, Mr. Berg assumed the attitude and by his conduct impressed Rose that he had heard everything that was said, and tried to get him to say something more than Mr. Berg had heard. Isn't that true in substance?

A. No. [366]

Q. Of what you told me?

A. Not as to the key. You put the question in such a way that it is very hard to answer, and to answer it truthfully.

Q. You have the privilege to explain it. I am willing for you to explain if you will confine your explanation to this question of the keys, so we won't get the jury mixed up on it.

A. I don't remember just what Mr. Berg reported

(Testimony of J. H. Miller.)

to me about the key. I know the key was mentioned, I know of that. I know the key was mentioned all through the conversation, but it didn't seem to me to be as important as some of the other points that were mentioned. But I told you, or intended to impress or to convey the information to you, that Mr. Berg had not heard that conversation in detail, but the things that he had heard made Mr. Rose believe that the conversation between him and Wooldridge had been overheard, and he probably thought it had been overheard in detail, and the result of it was that he came through and told the truth of the whole matter.

Q. Why do you say "the truth of the whole matter" if you don't know what the truth was from his statement?

A. You are asking me what I said to you, and that is what I said to you.

Q. I asked you if you would please confine your testimony to the question of the key and you are insisting on going outside of it, so we will drop that matter. Mr. Miller, when you had Mr. Rose in your office, Mr. Berg on a number of occasions challenged the truth of his [367] statements and said "Now, you are lying," did he not? A. No, sir.

Q. He didn't?

A. Rose kept saying he didn't remember. He would say something and "I don't remember any more," and Mr. Berg would say to him "Don't you remember," or "do you remember that a conversation about"—such and such, "What was that conversa-

(Testimony of J. H. Miller.)

tion. Now," he would say "tell the truth."

Q. What was Mr. Berg's attitude?

A. It was just the attitude of a man interested and trying to get a man to tell the truth.

Q. Was it vigorous, or calm as you sit there on the stand now?

A. It was not—I couldn't say that it was any more vigorous than just simply a man will make a statement.

Q. Have you had much experience with Mr. Berg's method in dealing with men?

A. No. Mr. Berg and I have had no work together, done no work together.

Q. You know as a matter of fact that Mr. Berg's usual method, the method he employed in this instance, when he is sweating a man and trying to get something out of him, is severe and vigorous?

A. I don't know.

Q. And insistent?

A. I never saw him sweat anybody.

Q. You were sweating Rose, weren't you?

A. Why, no.

Q. I suppose Mr. Rose was there just as calm as you are sitting there now, and you are just as calm as Mr. Berg was, just [368] as calm?

A. I was calm. I don't think Mr. Rose was very calm as far as that is concerned.

Q. Was he nervous?

A. He didn't appear to be entirely at his ease.

Q. Did he seem to be afraid? A. No.

Q. Describe what that man's condition was.

(Testimony of J. H. Miller.)

A. As I would say a man not entirely in the same condition of mind that he would be in if he was repairing a bicycle or something like that.

Q. Did he appear to be worried?

A. Yes. He appeared to be. I will tell you: He appeared to me to be a man that didn't want to tell everything he knew.

Q. Afraid, was he? A. No.

Q. Did he have the appearance and manner of a man who had something to hide?

A. Well, yes. He didn't seem to want to remember these things that had happened there.

Q. Nervous?

A. No. I can't say that he was nervous.

Q. He was not nervous?

A. I don't say that he was not nervous, but I say he didn't have the appearance of being nervous.

Q. Isn't it true that when he came in there he was not a normal man. By that I mean a man in control of all his faculties? [369]

A. That is what I am saying. I don't think he was entirely at his ease.

Q. You don't know what was the cause of it?

A. No.

Q. You were in the bicycle-shop, were you not, that evening? A. No, sir. I never was.

Q. That evening? A. No, sir.

Q. About the time that the first deputies came in the front door, were you not there a few minutes after? A. No. Not in the bicycle-shop.

Q. Near the front door?

(Testimony of J. H. Miller.)

A. By Wilson's bath-house. I think that was as near as I got to it.

Q. You have explained about this hallway and the examination that you had made. You instructed whom to place themselves there, Berg and Wood? A. Berg and Wood.

Q. And what other deputies did you have?

A. Frank Hall and Pete McMullen over in Judge Pratt's office.

Q. How did you get in there?

A. Frank Hall got the key I think from Judge Pratt or Harry Pratt.

Q. From Judge Pratt?

A. Either Judge Pratt or Harry Pratt.

Q. Don't you know that he got the key from Harry Pratt and that Judge Pratt was somewhat incensed about the matter that his office would be used for a purpose of that kind? Don't you know that? [370]

A. I will answer that fairly. Judge Pratt said something about it just two or three days ago. That was the first knowledge I had that he was not the man that had given his consent. I said to Frank Hall "You better get the key from Judge Pratt" or "Get the key from Pratt" is what I said, or "from Judge Pratt," or whoever it was, and afterwards Frank said "I have got the key and we can use the office."

Q. Did it come to your knowledge that Judge Pratt was highly incensed that his office should be used for that purpose?

(Testimony of J. H. Miller.)

A. No. He said something to Hall. I don't think he was highly incensed.

Q. About using it without his knowledge?

A. I don't know just what that was. I didn't hear the conversation myself.

Q. Don't you know, as a matter of fact,—I don't know that you do, but I am asking you if you do—that Judge Pratt went down to the marshal's office and called Frank Hall, who was in there, and who had gotten the key from Harry and called him down for doing such a thing as that?

A. I don't think so. I think Frank Hall said he met him somewhere on the street. I don't think he ever came to the marshal's office.

Q. What were the specific instructions that you had given Frank Hall and McMullen in regard to what they were to do over there in Pratt's office?

A. They were there to see who went in that building.

Q. Was it possible, Mr. Miller, from the condition of the light there to recognize a person who went in? [371]

A. No, I don't think it was to see exactly and know just who went in, but my instructions were—(interrupted).

Q. You could see the fact that some person had gone in there?

A. My instruction was that if they saw a man and a little girl go in there and nobody left, and they were satisfied that they were in there, they were to go up and be closer by so that they could see, if

(Testimony of J. H. Miller.)

anybody came out, who they were.

Q. They knew who the man and woman were supposed to be?

A. Yes. But from where they were I don't think they could recognize them at that distance.

Q. Where were you, yourself?

The COURT.—A man and a child, you mean, don't you? You said a man and a woman.

Mr. MARQUAM.—Q. You and the deputies knew who the girl was who was supposed to come there?

A. Yes.

Q. And they knew what she was going there for? They knew the whole scheme? You didn't leave them in the dark?

A. If you call it a scheme you can use that language.

Q. The little girl the other day called it a trap.

A. Then call it a trap.

Mr. ROTH.—I object to that. The little girl said he set his own trap.

Mr. MARQUAM.—Your deputies well knew the plan, didn't they?

A. Yes, at least each one knew his part of it.

Q. They knew what you were after?

A. Yes, sir. They knew practically what I was after.

Q. Where were you? [372]

A. I wasn't around there at all. I was outside and down here to see if that little girl was coming to do what Mr. Herrington told me she was going to.

Q. Mr. Herrington had brought her up from his

(Testimony of J. H. Miller.)

house to the corner of the bank here where you met them?

A. No. I met them down below by the N. C. somewhere.

Q. That is right. And you walked up with them, and Herrington left you at the corner here?

A. Well, I left them. I didn't walk with them. I left them down below here aways, and I think Herrington and the girl walked up farther and then they separated, and she walked up the street and crossed over.

Q. Where did you go after leaving them on Second Street?

A. I didn't go anywhere. I stuck around a little and strolled up that way.

Q. Shortly after she went up? A. Yes.

Q. George Berg told you when you met them that he had gone up there?

A. No. He told me—(interrupted).

Q. Well, during sometime while the girl was in the house there or in the bicycle-shop, Hall and McMullen came out of there and went down, did they not, out of Pratt's office?

A. They were out when I came up there. Hall was down on McPhee's corner and McMullen was standing up here on Mrs. Wilson's corner.

Q. Well, now, to fix the time, how long would you say it was, judging the time it would take the little girl to walk from where you had left her up to Rose's bicycle-shop, how [373] long would it be after she got in there until you got up there and

(Testimony of J. H. Miller.)

saw McMullen on one corner and Hall on the other?
About how much time elapsed?

A. That would be hard to tell you.

Q. Couldn't you fix it by what you did and where you walked? A. No.

Q. Did you do anything else or go anywhere than to walk slowly up to that place?

A. I don't remember whether I just walked along or stopped and waited, or just exactly what I did do.

Q. Were you at any time when you were going up Second Street—I presume going up there you would be on Second Street? A. Yes, sir.

Q. Was Laura Herrington in sight ahead of you?

A. I think I saw her cross over, or what I supposed to be her, cross over.

Q. And turn around the corner?

A. No. Cross over to Wilson's Bath-house.

Q. She went up on this side of the street?

A. I think she went up on this side of the street, if I remember correctly.

Q. And you were down on the Cushman Street corner? A. Down here somewhere.

Q. At least you think you remember of seeing her cross over?

A. I think I did. If I remember, I saw someone cross.

Q. From there after you had seen her cross over, you didn't go anywhere else, but continued walking up Second Street until you got to the corner?

A. I didn't go anywhere else. Whether I continued walking [374] or waited, I don't know.

(Testimony of J. H. Miller.)

Q. I was trying to get that as definite as possible, to show what time elapsed.

A. Yes. I want to do everything I can to try and fix that time.

Q. Would you say it would be a fair statement of the situation that as far as you remember, after seeing her cross the street, you continued to walk up probably slowly until you got up there on the corner?

A. I couldn't like to say anything like that, fix a thing that I am not positive of.

Q. You have no remembrance of going off of Second Street or doing anything else?

A. No. I am satisfied I didn't go off of Second Street. I don't believe I did. I think I was on Second Street all the time.

Q. When you got up to the corner, Pete McMullin and Hall had come out of Judge Pratt's office?

A. Yes, sir. They were out then. Hall was down on the McPhee corner and McMullen was up on the Wilson Bath-house corner.

Q. How long was it after you arrived at the corner there before anybody who had been in this room, this bicycle-shop, came out?

A. It was not very long.

Q. Wasn't it almost immediately, Mr. Miller?

A. I don't recollect. There was not very much time elapsed. I know that.

Q. Do you know what it was that caused Pete McMullen and Hall to come out of Pratt's office and go down towards the bicycle-shop? Was it, or was it

(Testimony of J. H. Miller.)

not the fact that a light [375] was either turned on or turned off that they could see from this office, and they immediately went down there. Isn't that the fact? A. I won't be too sure.

Q. You wouldn't be too sure, but anyway they were out of Judge Pratt's office? A. Yes, sir.

Q. And standing on the corner?

A. I think they reported to me that they saw these two people at different times go into the building, and they came out, as I had instructed them to come, to be able to determine who that was that was in there.

Q. And very shortly after at least you got there, somebody came out of the building. Who was it?

A. I don't know just who came out. I couldn't see any of them from where I was.

Q. What deputy had gone down first to the bicycle-shop, or in front of the bicycle-shop?

A. I don't think either one of them.

Q. Somebody must have gone down there. Somebody did go down there.

A. That was after that I think.

Q. After what? I asked you who was the first one that went down there. A. I don't know.

Q. Didn't you see them?

A. No, sir. I went back behind after these people came out. I went back in behind to where the other boys were. Then we came out after that, and when I came out, if I remember [376] right, McMullen was walking up with Mr. Wooldridge between the Wilson bath-house and Mr. Dodge's office, out in the middle of the street. And the others came out if I

(Testimony of J. H. Miller.)

remember right, now, and I said to them to come up to the office. I didn't go to the bicycle-shop.

Q. Didn't you look out—didn't you make an investigation at that particular time, or have some of your deputies do it, to see what this girl was doing or what was happening to her?

A. What was happening to her where?

Q. You knew where she had gone. A. Yes.

Q. You knew she was supposed to be in that bicycle-shop. Weren't you interested enough to go yourself or have some deputy go in there to see where she was? A. I had two men stationed there.

Q. Where? A. At the back.

Q. They couldn't get through that partition?

A. They could get through it pretty easy, a very thin door there.

Q. They could have gone right through there?

A. Yes. I think so.

Q. That is all nailed up. There is no way of exit or entrance there?

A. I know there is a door there and a man could go right through it if he wanted to, if there was anything serious enough for him to go through.

Q. Anyhow you didn't go yourself or send any deputy down there [377] to see what this man was doing there.

A. I had those two there all the time.

Q. You were relying entirely upon them?

A. Why, yes.

(Short recess; jury retire in charge of bailiffs and subsequently return into court when the defendant

(Testimony of J. H. Miller.)

and his attorneys and the District Attorney are present and the trial is resumed; the same witness on the stand.)

Q. Mr. Miller, do you know Mr. Wooldridge's daughter? Do *you who* she is? Do you know her when you see her?

A. No. I don't think I do.

Q. Haven't you seen her, Mr. Miller to know who she is? A. If I have I don't recall it.

Q. Do you know Mrs. Kettleson? A. Yes.

Q. You know that she is running a restaurant here? A. Yes, sir.

Q. You eat there most all the time? A. I do.

Q. Did you ever see Mrs. Wooldridge's daughter start to work there—Mr. Wooldridge's daughter, in there for a day or two working?

A. No, sir. Not that I know of.

Q. To refresh your memory, fixing the time about during last summer, June or July, isn't it a fact that about that time that you were in the restaurant eating as usual and you saw Mr. Wooldridge's daughter working there for the first time,—she had been there a day or two—and you asked Mrs. Kettleson what she was doing here. She said she [378] was going to work for her. That you told Mrs. Kettleson in substance and effect "No. She can't work here"?

A. No, sir.

Q. Did you ever say anything to Mrs. Kettleson—(interrupted). A. No, sir. Absolutely not.

Q. Absolutely not? A. Absolutely not.

Q. You didn't know she was working there?

(Testimony of J. H. Miller.)

A. No, sir. I don't recall that Mrs. Wooldridge's daughter ever worked for Mrs. Kettleson.

Q. Just starting to work, being there working for the first time? A. No, sir. Absolutely not.

Q. Are you prepared to say, Mr. Miller, that you never told Mrs. Kettleson that she couldn't let her work there, or whether that is the words or not, that is the substance and effect of it that because of Wooldridge being an enemy of the marshal's office she couldn't be permitted to work there?

A. No, sir. Never anything of that kind, nor have I ever said anything to Mrs. Kettleson about any of her help, only I might have tried to recommend somebody to her.

Q. You are positive and clear about that?

A. You bet I am clear about that.

Mr. MARQUAM.—That is all. [379]

Redirect Examination.

(By Mr. ROTH.)

Q. You say that you went to Mr. Riggs at the request of your superior?

A. Yes, sir. It was not Mr. Riggs, but Mr. Raeburn.

Q. Mr. Raeburn, Mr. Riggs' man? A. Yes, sir.

Q. What did Raeburn say to you when you went there and told him in effect what Mr. Marquam said; that you didn't want him to employ Mr. Wooldridge, or something to that effect? What did Mr. Raeburn say to you?

(Defendant objects as immaterial; that the purpose of the testimony was to show the interest of the

(Testimony of J. H. Miller.)

United States marshal and his deputies. Objection overruled. Defendant excepts and exception allowed.)

Q. What did he say to you?

A. Why, he told me that he didn't—he said to me, well, he said “I don't know as I can do anything in that matter. Mr. Wooldridge has been recommended to me, and he has been recommended by different ones, and among others by Mr. Roth.” That is what he said to me.

(Defendant moves to strike the answer as hearsay. Motion denied. Defendant excepts. Exception allowed.)

Q. Mr. Marquam asked you about advice that I gave to you with reference to this preparation. What advice did I give you?

A. You told me as regards the law in the matter, that the only thing that could be done within the law in these investigations would be to get evidence in regard to what [380] she claimed to have been the crime previous to that time.

Q. Was anything said in my advice to you upon the subject as to whether or not as to how far that this was permitted to go, should be permitted to go?

A. Yes.

Q. What was that?

A. You told me that I couldn't be permitted—that if the thing developed in such a way that Mr. Wooldridge attempted to lay any hands on the girl or anything else, that it should be stopped right then and there; that nothing of that kind should be allowed.

(Testimony of J. H. Miller.)

Q. That no acts of any kind should be permitted?

(Defendant objects as leading. Overruled. Exception allowed.)

A. Yes, sir. That is it.

Q. Now, with reference to the statement that Mr. Berg made to you about what he heard down there, Mr. Marquam brought that thing out and dwelt on it at great extent. Now, let me ask you this: If, after this statement had been made and sworn to by Mr. Rose, if Mr. Berg made any statement as to the correctness of the statement as to what did actually occur there.

(Defendant objects to the form of the question in which it is put as not proper redirect examination. Objection overruled. Defendant excepts. Exception allowed.)

A. Mr. Berg—I said to Mr. Berg “Is there anything more that you know of, that has not been said,” after Mr. Rose said that was all that he remembered. Mr. Berg said “No. I think that is substantially correct as far as I know.” [381]

Q. After Mr. Berg stated that, and you had this in writing, did you make any particular effort to find out just exactly in detail what Mr. Berg had said?

A. No. Not in detail. No.

Q. Did you consider that that statement covered it?

A. I did. I considered that that was the whole thing.

Q. Where is Deputy Marshal Wood now?

A. He has gone on a long trip down river.

(Testimony of J. H. Miller.)

Q. When did he start?

A. I don't remember the exact date, several days ago.

Q. Do you know whether or not the District Attorney's office knew that he was going to go?

(Defendant objects as immaterial. Objection sustained.)

Mr. ROTH.—That is all.

Mr. MARQUAM.—No further examination.

Testimony of George Herrington, for Plaintiff.

GEORGE HERRINGTON, a witness for plaintiff, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name?

A. George Herrington.

Q. Are you the father of Laura Herrington?

A. Yes, sir.

Q. How old is she?

A. She is fourteen years old,

Q. When was she born? [382] A. 1901.

Q. What day of the month?

A. The second or third of August, I believe. It was in August.

Q. Where was she born? A. Circle City.

Q. Did you ever live on Ester Creek?

A. Yes, sir.

Q. How many times did you live on Ester Creek?

A. I was there a year, a little over a year.

Q. How many times did you live there, just one time? A. That was all, yes, sir.

(Testimony of George Herrington.)

Q. When did you go there? A. 1913.

Q. What time of the year? A. In July.

Q. And what time did you leave there?

A. I moved in from there last—I think September, August or September.

Q. Then you stayed there over two years.

A. No. I left—I moved in in 1913, moved in in 1914.

Q. Now you get those dates right, about when you moved out there and when you moved back.

A. I moved out there year before last, 1914.

Q. That was not 1913? A. No. It was 1914.

Q. Year before last? A. Yes.

Q. What time of the year did you move out there?

A. It was July? [383]

Q. In July. And when did you move back here?

A. We took the house, I think it was August or September.

Q. Of last year? A. Yes, sir.

Q. Last August or September? A. Yes, sir.

Q. Where were your family, that is, your wife, Catherine, and Laura last Christmas, a year ago, which would be Christmas of 1914?

A. They were in Fairbanks.

Q. When did they leave out there to come here?

A. I can't say the exact time but a few days before Christmas.

Q. How long did they stay here?

A. I think they stayed here a couple of weeks?

Q. Did they stay here until after New Year's, do you know?

(Testimony of George Herrington.)

A. I couldn't be sure. It was quite a while ago and I have forgotten.

Q. Did you come in at that time? A. No, sir.

Q. Did Laura Herrington, your daughter, ever tell you at any time that she had had sexual intercourse with W. H. Wooldridge?

(Defendant objects as hearsay. Objection overruled. Defendant excepts. Exception allowed.)

A. She never told me but I heard her tell Marshal Miller.

Q. Marshal Miller and who else?

Mr. MARQUAM,—We object.

The COURT.—The question was answered, that “She never told me.”

Mr. MARQUAM.—We move that the remainder of the answer be [384] stricken, that all the answer be stricken, and in deference to the previous ruling of the Court, make a special request that the latter part of it be stricken as hearsay.

The COURT.—The portion of the answer in which the witness stated that he heard her tell Marshal Miller, may be stricken and the jury instructed to disregard it.

Mr. ROTH.—When was the first time that you ever heard that she said that Mr. Wooldridge had had sexual intercourse with her?

(Defendant objects as irrelevant, incompetent and immaterial. Objection sustained.)

Q. Were you in the District Attorney's office in the courtroom in Fairbanks—in the courthouse in Fairbanks around about the 10th of February, 1916,

(Testimony of George Herrington.)

when Chief Deputy Miller, J. H. Miller and R. F. Roth and Laura Herrington were present?

(Defendant objects as leading. Objection overruled. Defendant excepts. Exception allowed.)

A. Yes, sir.

Q. How did you come to go there at that time?

A. I was called on the telephone to come over to the marshal's office, and Mr. Miller asked me if I could bring—

(Defendant objects to any conversation between the witness and Miller. Objection sustained.)

Q. While you were present in there did you hear all the conversation that took place between Laura Herrington and myself, and Laura Herrington and J. H. Miller? A. Yes, sir.

Mr. ROTH.—You may cross-examine the witness.
[385]

Mr. MARQUAM.—No cross-examination.

Testimony of Mrs. Exena Herrington, for Plaintiff.

Mrs. EXENA HERRINGTON, a witness for plaintiff, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. Exena Herrington.

Q. Are you the wife of George Herrington?

A. Yes.

Q. Are you the mother of Laura Herrington?

A. Yes.

Q. Are you acquainted with Mr. W. H. Wooldrige, the gentleman sitting over there at the table?

A. Yes.

(Testimony of Mrs. Exena Herrington.)

Q. How long did you know him?

A. In Fairbanks here.

The COURT.—On Fairbanks Creek?

A. No. Here.

Mr. ROTH.—Q. Have you known him ever since he has lived in Fairbanks? A. Yes.

Q. Did you see Mr. Wooldridge down at your house one day in February when he came about some potatoes, that is last month? A. Yes.

Q. Did Mr. Wooldridge come into the house?
[386]

A. Yes. I called him in.

Q. What did he say when he came there?

A. He said that George spoke to him that he wanted some potatoes, and he asked me if I had enough for a few days. I told him I think so, and I told him to see George first if he wanted them he could bring them.

Q. Well, where was Laura at that time?

A. She was upstairs.

Q. All right. Did Mr. Wooldridge come in?

A. Yes. Laura told me to tell him, to call him in.

Q. When he came in did you talk to him some more?

A. No. I excused myself and went upstairs and left them alone.

Q. Left Laura and Wooldridge alone? A. Yes.

Q. How long did he stay there at that time?

A. I don't know.

Q. Did you hear him go out or did you come down before he went out?

(Testimony of Mrs. Exena Herrington.)

A. Laura called me that he was going out so I come downstairs.

Q. Did he come back again? What time of day was that that he came there about the potatoes?

A. About ten o'clock in the morning.

Q. Did you see him again? A. Yes.

Q. How long after that did you see him again that same day? A. About half an hour after.

Q. Where were you? A. I was in the cache.

Q. Did he come into the cache where you were?
[387] A. Yes.

Q. Just state what was said in there by you and by Mr. Wooldridge at that time.

A. I don't know what he said.

Q. Don't you know anything that he said there? Did he give you anything?

(Defendant objects as leading, suggestive, and improper examination.)

Q. Did he say anything?

A. He told me in the house that he had something for me.

Q. In the house? A. Yes.

Q. And then did you go into the cache?

A. No. That was before. But after that.

Q. After that. Then what did he do?

A. So I told him to come upstairs.

Q. All right. Did he go upstairs? A. Yes.

Q. Well, what did he—What happened up there?

A. Well, he said he was afraid to come to the house.

Q. All right. Go ahead.

(Testimony of Mrs. Exena Herrington.)

A. Well, I said, "Don't you be afraid. You can come in anytime you want to." So, well, he said he was kind of afraid. Well, I said, "If even I am not home, you can come in and sit down and talk to the girl." Well, he said he was kind of afraid. I told him he not to and I asked him "Ain't you know Laura before," and he said "Yes." Well, I said, "You don't have to be afraid then. You can come in any time you want to, even if I am not home."
[388]

Q. Did he give you anything?

A. Not this time.

Q. All right. Is that all? What else was said there at that time, if anything?

A. He told me to go up to his place. I told him I couldn't.

Q. What did he tell you about his place?

A. Well, he said his wife was working in the laundry. She won't be home until twelve o'clock. I told him I couldn't go because the neighbors would see me and talk about it.

Q. Did he give you anything?

(Defendant objects as leading. Sustained.)

Q. Go ahead and tell everything.

A. And I told him to bring it if he could. Well, he said, "Can't you come up to-morrow at ten o'clock?" I said "I don't know," and I said, "Might I would and might not," and so he said he would go off and get it, and I told him all right.

Q. Go ahead. A. So he went up and got it.

Q. What? A. That stuff.

(Testimony of Mrs. Exena Herrington.)

Q. What? A. Whiskey.

Q. He got it you say. What did he do with it?

A. Yes. He went up and got it.

Q. All right.

A. And I was in the cache when he brought it.

Q. All right.

A. And he gave me the dollar and he said, "Give that to [389] Laura." I said, "All right."

Q. Did he give you the bottle, too?

A. Yes, at the same time.

Q. What kind of a bottle was that?

A. Well, I don't know, a flask bottle about that big and that high (showing).

Q. Did he say where he had got it? A. No.

Mr. ROTH.—You may cross-examine.

Mr. MARQUAM.—I move that all this testimony of this witness in regard to any whiskey or liquor be stricken as incompetent, irrelevant and immaterial.

(Motion denied. Defendant excepts. Exception allowed.)

Cross-examination.

Mr. MARQUAM.—Q. Mrs. Herrington, how old are you? A. I don't know my age.

Q. Is there any way that you can explain or tell, so this jury will know about how old you are?

A. I don't know. My father never tell me anything, my age or anything.

Q. Did any of your people where you were raised ever tell you how—that is, that were older than you—ever tell you how old you were? A. No.

Q. Where were you born? A. St. Michael.

(Testimony of Mrs. Exena Herrington.)

Q. And you have no family record or history so as to determine [390] when you were born?

A. No.

Q. Do you know when you left St. Michael?

A. Well, I was a little bit of a girl when I left St. Michael.

Q. Where did you go to after leaving St. Michael?

A. Up Stewart River. All over that country I was.

Q. About how old were you then?

A. I don't know. Might I was sixteen or seventeen.

Q. Do you remember how old you were when you first went to Circle and lived there? A. No.

Q. That was after you had been up in the Stewart River country? A. Yes. Long after.

Q. When were you married to George Herrington? A. That is going on eighteen years.

Q. Eighteen years?

A. You see I can't count, but from my little girl here Catherine, she will be eighteen on the 16th of May. We were married nineteen years. Now me and George have been married.

Q. About nineteen years ago since you and George were married? A. Yes.

Q. Were you married before?

A. Well, called it marriage, stayed—(interrupted).

Q. I understand you. You were married by the church with George Herrington?

A. No. By the judge.

(Testimony of Mrs. Exena Herrington.)

Q. That is the first marriage—(interrupted).

A. Yes. [391]

Q. —by the judge or by a minister?

A. Yes. By the judge.

Q. That is the first time you were married according to white men's rules or laws? A. Yes.

Q. When did you come over here from Circle?

A. I can't remember when we come over here.

Q. This town here was pretty small when you first came.

A. Yes, that spring. It was struck in the winter, and we came up that spring.

Q. Did you come by boat? A. Yes.

Q. How old was Laura when she came here?

A. She was only about a year old.

Q. Laura has a younger sister, has she not?

A. Yes.

Q. What is her name? A. Lena.

Q. How old is she? A. She is six.

Q. How long have you known Mr. Roth?

A. I just know him here.

Q. About how long?

A. Since I started to come up here.

Q. Do you remember when that was?

A. I don't know. I can't keep up the days, because I don't know how to read or write.

Q. Do you know Marshal Miller?

A. No. [392]

Q. You know who he is?

A. I have seen him down in the house.

Q. When did you first see him to know who he

(Testimony of Mrs. Exena Herrington.)

was? A. He come down to the house.

Q. You don't remember, you can't tell us when that was or what date it was? A. No.

Q. I understood you to say that Mr. Wooldridge came to your house one morning about ten o'clock?

A. Yes.

Q. Just tell the jury what he said when he came there.

A. Why, he said that George spoke to him the other day that he wanted some potatoes. I said, "Yes. I guess we need potatoes." Well, he asked me if we need them right away. "Oh, I don't know," I said. And he said to me there would be enough for you for a little while. I said "Yes." Well, I said "See George. If he wanted them right away, you can bring them." That is what I told him.

Q. Did you ask him into the house?

A. Laura told me to tell him to come in.

Q. Let me ask you, Mrs. Herrington, how long a time had it been before that that Mr. Wooldridge had been at the house?

A. That was the first time he had been in the house.

Q. That is, you mean the first time right now, in this immediate vicinity of time? A. Yes.

Q. How long had it been since you had ever seen Mr. Wooldridge around your house, or seen him?

[393] A. Oh, a couple of years, I guess.

Q. A couple of years. And the first time he came there to the house inquiring about these potatoes,

(Testimony of Mrs. Exena Herrington.)

Laura told you to ask him in? A. Yes.

Q. And she told you then to go upstairs?

A. No. She didn't tell me. I excused myself. I told him, "I got to go upstairs and work."

Q. I understood you to say in your direct examination that Laura told you to go upstairs. I may have been mistaken.

A. No. She didn't tell me to go upstairs.

Q. You went up yourself?

A. Yes. I went up myself.

Q. Well, how long had it been from the time that Wooldridge came there and knocked at the door and you asked him in until you went upstairs?

A. I didn't look at the time.

Q. About how long?

A. It may have been about half an hour.

Q. What was about half an hour; that he was there? A. Yes.

Q. I didn't ask you that. I was asking you, from the time that he came and knocked on the door and you asked him to come in, how long was it after that that you went upstairs yourself?

A. Just a minute after he came in I went upstairs.

Q. Then, as soon as Laura called to you and told you that he had gone—(interrupted).

A. She said he—(interrupted). [394]

Q. You came down again? A. Yes.

Q. What did you go upstairs for?

A. I go up to fix the beds. I was busy that morning.

Q. Why did you immediately come down when

(Testimony of Mrs. Exena Herrington.)

Laura told you that he had gone?

A. Well, I wanted to say to him "Good-by" when he was going away, you know.

Q. When you came down had he gone or was he still there? A. He was there.

Q. And how long were you upstairs? Was that what you referred to a while ago, the time you were upstairs, when you said it was half an hour?

A. It may have been half an hour.

Q. What was your purpose in leaving Laura and Mr. Wooldridge alone there after Laura had told you to invite him in? What was your purpose? What did you do that for?

A. Well, they were making a plan for him, so I gave her a chance to talk to him.

Q. That is what I thought. Who was making a plan for him, and who told you about it?

A. She told me.

Q. When did she tell you that?

A. She told me the next day when Mr. Wooldridge left there.

Q. The next day after? A. Yes.

Q. Or the day before? A. No. The next day.

Q. Let me ask you this question: At the time that Wooldridge [395] first came there and Laura told you to ask him in, you knew that they were laying a plan for him. She had told you? A. Yes.

Q. You knew that. Now when had you been told about that?

A. The next day, you know. Not the next day but I can't explain to you.

(Testimony of Mrs. Exena Herrington.)

Q. Do you mean the day before?

A. The day before, yes.

Q. And were you told that probably Wooldridge would come to the house to see you about some potatoes, and if he did come they were laying a plan for him? A. Yes.

Q. Did you approve of that, Mr. Herrington? Was that satisfactory to you?

A. I can't understand.

Q. Did you like that? A. I like it?

Q. I mean, when they told you the day before Wooldridge came there that they were going to get a plan to—(interrupted).

The COURT.—Q. Was it all right with you?

A. Yes.

Mr. MARQUAM.—Q. Did you know what they wanted to do this for? A. No.

Q. Then why was it all right with you if you didn't know anything about it?

A. She told me that they were going to plan for him, and she didn't tell for what.

Q. And still, not knowing anything about it, it was all right [396] with you, Mrs. Herrington?

A. Yes.

Q. Did George tell you anything about it?

A. No. He never told me anything about it.

Q. Just Laura told you about it? A. Yes.

Q. Then why did you think it was necessary then, Mrs. Herrington, when he came in for you to go upstairs? Did you know that Laura was trying to lay this plot for him and that you might interfere with

(Testimony of Mrs. Exena Herrington.)

it? Was that the idea? A. Yes.

Q. Didn't you ask Laura when she told you this, that they were trying to lay a plot for him, or a plan for him, whatever word you used, didn't you ask her what it was all about? A. No.

Q. You didn't ask her what it was about?

A. No.

Q. Well, I would like to ask you again why you thought it was all right if you didn't know anything about it, what the plan was or what it was for?

A. It is with me like this; I don't want to know anything. I never ask things.

Q. Did Laura tell you that the marshal was talking to her? A. Yes.

Q. And that the marshal wanted to get him?

A. Yes.

Q. Did she say anything to you about Mr. Roth, the District [397] Attorney, wanting to lay a plot for him and get him? A. No.

Q. She didn't mention Roth's name?

A. No.

Q. She just mentioned the marshal's name?

A. Yes.

Q. And you supposed, of course, if the marshal wanted to do a thing like that that it must be all right? A. Yes.

Q. That is the way you looked at it. Well, Mrs. Herrington, was Laura in the habit of laying plans like that? A. I don't know.

Q. When was the first time that George Herring-

(Testimony of Mrs. Exena Herrington.)

ton, your husband, talked to you about this affair, this trap?

A. He never tell me anything about it.

The COURT.—I want to call counsel's attention to the fact that that is not cross-examination. When the proper time comes you can make this witness your own witness, if you so desire. (Argument.)

Mr. MARQUAM.—Do I understand the Court to rule that this is improper cross-examination?

The COURT.—Yes. The Court has so ruled.

(Defendant excepts. Exception allowed.)

(Here the Court takes a recess until two P. M. to-day and the jury, after being admonished, withdraw in charge of the bailiffs. At two P. M. the defendant and his attorneys and the District Attorney and the jury are present in court and the trial is resumed, and said witness is further cross-examined.)

Mr. MARQUAM.—Q. Mrs. Herrington, in answer to a question asked you by Mr. [398] Roth this morning, you said, "Laura told me to call him in," did you not? You testified so this morning.

A. Yes.

Q. Referring to Mr. Wooldridge, "Laura told me to call him in." A. Yes.

(Here the witness calls for a glass of water and is given same.)

Q. I was asking you about your statement this morning that Laura told you to call him in, referring to Mr. Wooldridge. A. Yes.

Q. Where was he then, at the door?

(Testimony of Mrs. Exena Herrington.)

A. He was at the door, outside.

Q. And just what did he say to you when he came to the door?

A. He said, "George wanted— He told me that he wanted some potatoes."

Q. George told him that he wanted some potatoes? A. Yes.

Q. Was that the front door or the back door?

A. The front door.

Q. He just stood there? A. Yes.

Q. Did he ask if George was there, or did he just ask you about the potatoes?

A. Well, he just asked me about the potatoes.

Q. He told you that George and he had spoken together about some potatoes before that?

A. Yes.

Q. And you didn't ask him in, or he didn't offer to come in until the girl told you to have him come in? [399] A. Yes.

Q. Then you asked him to come in? A. Yes.

Q. And you went upstairs. You said this morning that he gave you a dollar to give to Laura, I understood? A. Yes.

Q. Just what did he say and what did you say at that time? (No answer.) Do you understand the question?

The COURT.—Q. What did he say when he gave you a dollar, and what did you say?

A. Well, he told me to give it to Laura.

Mr. MARQUAM.—Q. He told you to give it to Laura? A. Yes.

(Testimony of Mrs. Exena Herrington.)

Q. Isn't this true, Mrs. Herrington: That you asked Mr. Wooldridge to loan you a dollar, that you had nothing to eat in the house, that you were hard up?

A. No.

Q. That is not true? A. No.

Q. Do you know Mr. Dodge, know who he is?

A. I seen him once.

Q. Where? A. Up to Morency's.

Q. He was there talking with you? A. Yes.

Q. Didn't he ask you what had occurred there at the time that Wooldridge came there? He was talking to you about that, was he not?

A. Well, he asked me a few questions there.

[400]

Q. Yes? He asked you, did he not, if Wooldridge had given you any money, or a dollar, did he not?

A. I don't remember if I did answer that or not.

Q. That is what you were there with him for. At least that is what he was there for, to talk with you and find out what you knew about this case? Isn't that true? Mrs. Herrington, isn't that true?

A. I don't know.

Q. Well, anyway, he was talking.

A. Yes, I was talking to him.

Q. And talking about this case? A. Yes.

Q. And did you not at that time tell Mr. Dodge that you asked Mr. Wooldridge to loan you a dollar or to give you a dollar?

A. I didn't ask him for a dollar.

Q. The question is: Did you not tell Mr. Dodge

(Testimony of Mrs. Exena Herrington.)

at that time when he was finding out what you knew about this case, that: "I asked Mr. Wooldridge to let me have a dollar" or "to loan me a dollar"?

A. No.

Q. Isn't that what you told Mr. Dodge?

A. No. I didn't.

Q. You deny that?

A. No, I didn't ask him that.

Q. Then you deny it. Well, had there been anything said between you and Laura and Mr. Wooldridge about any money, before he gave you this dollar?

A. No. I never know nothing about the dollar, and he gave it to me to give to Laura. That is all I know. [401]

Q. Without saying anything, just came and handed you a dollar.

A. Yes. He said—(interrupted).

Q. What did he say?

A. He said: "You give that to Laura."

Q. You gave that to Laura? A. Yes.

Q. Did he say what for or why? A. No.

Q. Was Laura there? A. No.

Q. Where was she?

A. She was in the house.

Q. Where were you and Mr. Wooldridge?

A. In the cache.

Q. Nobody heard what was said there except you and Mr. Wooldridge? A. That is all.

Q. Isn't it true, Mrs. Herrington, that when Wooldridge was there that time that after he

(Testimony of Mrs. Exena Herrington.)

started away, that you followed him out and closed the door and then was in the cache or by the door there and at that time asked him if he would not let you have a dollar; that you were hard up; that you had nothing to eat in the house; and that you wanted to get something to eat with? Isn't that true? A. No, I did not.

Q. Isn't it true that that was the condition in your house with regard to food; that you had nothing to eat there? Isn't that true?

A. That is true all right, but I didn't ask Mr. Wooldridge for [402] a dollar to eat.

Q. You didn't? A. No.

Q. That condition was true there at your house?

A. Yes.

Q. What kind of a bottle of whisky do you claim that Mr. Wooldridge gave you?

A. I can't tell you. A flask bottle.

Q. Now, just describe to the jury what kind of a flask.

A. About that long, I guess (showing), a pint, what they call it.

Q. A pint. A. Yes.

Q. You know the difference between a pint and a quart bottle, this big round bottle, don't *you the* difference? A. Yes.

Q. You know the difference between a pint bottle and a half a pint bottle? A. I guess I do.

Q. You guess you do. Now, what color was that bottle? A. White.

Q. It was white? A. Yes.

(Testimony of Mrs. Exena Herrington.)

Q. Where is that bottle now?

A. I don't know. The marshal got it.

Q. Which marshal; Marshal Berg? A. Yes.

Q. All right, Mr. Berg got it. When did he get that bottle from you?

A. I think it was—I think it was two days after. I don't know. [403]

Q. You think it was two days. Now, what do you mean by two days, Mrs. Herrington? Two days from when?

A. Two days after this happened, I guess.

Q. Two days after it happened he came up there, and did you have that same bottle there?

A. Yes.

Q. That Mr. Wooldridge had given you?

A. Yes. I put it away.

Q. What did you put it away for?

A. I didn't want nobody to see it.

Q. What? A. I didn't want nobody to see it.

Q. Did you drink what was in it?

A. Yes. I did.

Q. And you didn't want anybody to see the bottle? A. No.

Q. Where did you put it?

A. Under my pillow.

Q. Under your pillow. And when Mr. Berg came up there, what did he ask you, or what did he say?

A. He asked me: "Where is the bottle that Mr. Wooldridge gave you"? I said, "It is empty." He said: "It don't make any difference." So I gave it to him.

(Testimony of Mrs. Exena Herrington.)

Q. You gave it to him and he took it away.

A. Yes.

Q. And that, you say, was a pint bottle?

A. Yes.

Q. You don't know what Mr. Berg did with that bottle?

A. No, I don't know what he done with it. [404]

Q. Did you see Mr. Berg after that and talk with him about any bottle or different kind of bottles? Did he come back and ask you if you had any different kind of bottles? A. No.

Q. He never came back? A. No.

Q. After Mr. Wooldridge went out of the house when he came there the first time and you invited him in, how long was it after that that he came back the next time? A. Half an hour.

Q. Half an hour. How long did he stay then? Was it the first time—when was it that he gave you this dollar? [405]

A. That the same time he gave me that bottle.

Q. The same time he gave you the bottle. At the time that Mr. Dodge was talking to you about what you knew of this case and what happened up there and what Wooldridge had done when he was there, did you tell Mr. Dodge anything about Wooldridge giving you any liquor or whisky?

A. I don't tell him that.

Q. He was asking all about just what happened and what Wooldridge did, wasn't he?

A. Yes. He asked me a few questions, but he didn't ask me much.

(Testimony of Mrs. Exena Herrington.)

Q. Do you remember what day of the week it was that you have just been testifying about, or what day of the month, what date it was? I assume you can tell the date? A. No.

Mr. ROTH.—Which time?

Mr. MARQUAM.—When he was there the first time.

Q. Do you know what day of the week it was?

A. No.

Q. Well, were those potatoes delivered?

A. Yes, he delivered them the next day.

Q. Well, what time of the day?

A. It must have been nine or half-past nine.

Q. And who was there then?

A. George was there.

Q. George was there and you were there?

A. Yes. All of them was there. [406]

Q. Was Laura there? A. Yes.

Q. What was done or said at that time?

A. He didn't say nothing.

Q. He just delivered the potatoes and went away about his business? A. Yes.

Q. One sack of potatoes? A. Yes.

Q. You didn't ask him in the house?

A. Well, George told him to bring the potatoes in.

Q. I mean, ask him to stay there? A. No.

Q. The girl didn't ask you to have him stay?

A. No, she was asleep.

Q. She was asleep then. What were you doing when he came? A. Nothing.

Q. I mean what were you occupying your time

(Testimony of Mrs. Exena Herrington.)

with at that particular time; what were you doing? You must have been doing something, whether you were sitting down, or getting breakfast, or washing the dishes, or something of that kind; what were you doing when he came in?

A. I was in the kitchen there waiting for George to eat breakfast.

Q. You were cooking breakfast yourself?

A. Yes.

Q. For yourself and George and the children?

A. Yes.

Q. And you were just waiting for George to finish breakfast and then you were going to do up the dishes? A. Yes. [407]

Q. You were all right at that time? A. Yes.

Q. You were not drunk then? A. No.

Q. Or intoxicated? A. No.

Q. Then when did you see Mr. Wooldridge again, Mrs. Herrington?

A. I didn't see him any more after that.

Q. What time did he come to the house again? Do you know? Was it that same day or the next day? Say. He came there the one day when he talked about the potatoes, then the next day he came back when you had gone away. Is that the idea? A. He brought the potatoes the next day.

Q. The next day in the morning? A. Yes.

Q. He was supposed to come back that evening?

A. Yes.

Q. And you were asked to go away? A. Yes.

Q. What time did you go away?

(Testimony of Mrs. Exena Herrington.)

A. I don't know what time I went away.

Q. Who asked you to go away?

A. Well, Laura told me that they were going to make arrangements there. She wanted me to go away about six o'clock.

Q. Was George there at that time? A. No.

The COURT.—We are getting back to the same proposition that [408] the Court called your attention to this morning.

Mr. MARQUAM.—Does your Honor mean with reference to anything that George Harrington said?

The COURT.—Yes.

Mr. MARQUAM.—I have a right to find out who was there. She testified she left there and wasn't there that day, and I want to know how she came to go away.

Mr. ROTH.—We object to that as not proper cross-examination.

The COURT.—Objection sustained and exception allowed.

Mr. MARQUAM.—Does the Court hold that I can't question this witness, so that I will know what the Court's ruling is, about anything that occurred or anything that she knows about this affair after that first occurrence there?

The COURT.—The Court has not so ruled. The Court has tried twice to explain that proposition.

Mr. MARQUAM.—I understand the explanation, but I don't agree with the Court's views of the law, but I will follow, and have to follow, the Court's ruling.

(Testimony of Mrs. Exena Herrington.)

The COURT.—The Court does not desire to have you cross-examine her, or examine her on matters which were not brought out on the direct. You can make her your own witness.

Mr. MARQUAM.—We wish the record to show that we further desire to cross-examine this witness about matters not testified directly to in the direct examination, for the purpose of showing her interest or motive in giving the testimony which was elicited upon direct examination, if possible.

The COURT.—Well now, that is such a complicated matter, the way you present it that the Court cannot rule upon it. [409] The Court has told you that you can do that, and has indicated to you the proper time to do it. With that, you have coupled up something that you cannot do at this time.

Mr. MARQUAM.—I understand generally what the ruling of the Court is, and we except to the ruling as contrary to law.

The COURT.—Exception allowed.

Mr. MARQUAM.—We contend, so that it will be plain as far as the record is concerned, that we have a right to cross-examine this witness upon any matter connected with this whole transaction, about which she has testified in chief, for the purpose of testing her credibility, for the purpose of testing her motives, for the purpose of testing her inclination to tell the truth, and for purposes of that character.

Q. You said that Mr. Wooldridge at one time told you that he was afraid to come to the house.

A. Yes, sir.

Q. Now, what was that in response to, anything

(Testimony of Mrs. Exena Herrington.)

that you had said? How did he happen to come to say that?

A. Well, I didn't understand you.

Q. What caused him—what made him say that, what had you just said to him?

The COURT.—Q. Do you know, Mrs. Herrington, why he told you that he was afraid to come to the house, as you stated this morning?

A. Laura told him to come at half-past seven.

Mr. MARQUAM.—Q. Why did he say he was afraid to come? A. I don't know. [410]

Q. He didn't give you any reason? He didn't say why? A. No.

Q. You didn't ask him why he was afraid to come?

A. No, I didn't ask him.

Q. *Isn't true* that when he came there that morning and said he had talked with George about these potatoes, he wanted to know whether George was there, and you told him that George would be there in the evening after supper, and for him to see George about it. Didn't you tell him that?

A. I told him he can see him in the street.

Q. You told him he could see him in the street?

A. Yes.

Q. Didn't you tell Mr. Wooldridge that George would be home that evening at seven or eight o'clock?

A. No.

Q. You didn't tell him that? A. No.

Q. You told him to see him in the street?

A. Yes.

Q. What street? What did you mean by that?

A. In the street. In the saloons somewhere.

(Testimony of Mrs. Exena Herrington.)

Q. Where?

A. In the saloons, Fairbanks Corner, or Bill McPhee's, anywhere.

Q. Did you tell him that? A. Yes.

Q. You told him to see him at Bill McPhee's or the Fairbanks corner? A. Yes. [411]

The COURT.—You asked her what was meant by in the street.

Mr. MARQUAM.—I am asking her if she said those words to him.

Q. Did you say those words to him, tell Wooldridge that he could see him at Bill McPhee's or the Fairbanks Corner? A. Yes.

Q. You told him that? A. Yes.

Q. Did you also tell him that you could see him in the street?

The COURT (to MARQUAM).—You said “You could see him?”

Mr. MARQUAM.—I beg your pardon.

Q. Did you also tell him that he could see him in the street? A. Yes.

Q. What else did you tell him?

A. That if he wanted the potatoes, he could bring them there.

Q. That if George wanted the potatoes, he could then bring them? A. Yes.

Q. You are sure that you didn't tell him that George would be home that evening at seven or eight o'clock? A. No.

Q. Now, what excuse or what reason had you for telling Wooldridge that he could come at any time?

A. Because to put a trap for him.

(Testimony of Mrs. Exena Herrington.)

Q. Put a trap for him? A. Yes. [412]

Q. So you told him that. Were you told to tell him that? Did somebody tell you to tell him that?

A. No.

Q. Why did you tell him that if it was not suggested to you, or told you? Was that your own idea?

A. No. Laura told me to tell him to come in the house.

Q. And he did come in the house?

A. So I told Mr. Wooldridge the girl wanted to see him. That is what I told him, and he came in, then I excused myself and I went upstairs.

Q. Then you told him sometime—at the time you answered the question in answer to Mr. Roth's interrogatories, to his questions, that you told him that he could come at any time. A. Yes.

Q. When did you tell him that? Was it after you had come downstairs or before you went upstairs?

A. After I came downstairs. He told me he had something for me and I told him to come upstairs.

Q. He went upstairs? A. Yes.

Q. What was it that he had for you?

A. Whiskey, I guess.

Q. I don't want any guess. Did he give you the whiskey then when you went upstairs? A. No.

Q. Then he didn't have anything for you?

A. No. He didn't have it then.

Q. Oh, but he told you he had something for you?

A. Yes. [413]

Q. But he didn't have anything at that time?

A. No.

(Testimony of Mrs. Exena Herrington.)

Q. You also told him you said this morning "even if I am not at home, you can see the girl."

A. Yes.

Q. What did you tell him that for?

A. Because she wanted to put a trap for him.

Q. And you were telling him that to help him to fall into the trap? A. Yes.

Q. You said something this morning about telling Wooldridge that he knew the girl, or had something to do with the girl, or something of that kind. What was that? A. No. He didn't say that.

Q. What did you say, or what did he say?

A. I asked him if he knowed the girl before. He said yes. Well, I said—(interrupted).

Q. Is that the first time you heard of it?

A. Yes.

Q. Is that the first time you heard about that?

A. Yes.

Q. What made you ask him about it?

A. I was just thinking in my head.

Q. Nobody had told you anything about it?

A. No.

Q. You were just guessing at it?

A. I was just guessing at it, and I asked him.

Q. You were just guessing at it?

A. Yes. [414]

Q. Nobody had ever told you anything about it?

A. No.

Q. No one? A. No one.

Q. Are you quite positive of that, sure of that?

A. Nobody told me.

(Testimony of Mrs. Exena Herrington.)

Q. I will ask you if at the time that Mr. Dodge was talking to you at that time up in the Morency house, whether you had ever heard, anybody had ever told you, either the girl or anybody else, that Wooldridge had ever had anything to do with her, and you told him the first time that you ever heard of it, or thought of it, was after the girl had been up to the District Attorney's office? A. Yes.

Q. Did you tell him that? A. Yes.

Q. Is that true? A. Yes.

Q. That is true then, is it? A. Yes.

Q. Then the girl did tell you. Had you been up to the District Attorney's office? A. Me?

The COURT.—Can't you fix the time that she was up to the District Attorney's office with reference to the other time? In one case her answer might be correct, and in the other case her answer might not be correct.

Mr. MARQUAM.—I am not trying to confuse her.

The COURT.—No, I am not trying to indicate that you are, [415] but I suggest that if you could fix that time, she might be able to answer intelligently.

Mr. MARQUAM.—How can I tell anything about it? I don't know when she was there. I am trying to find out from this witness when she was there.

The COURT.—You are speaking of three different periods; Mr. Dodge, the District Attorney's office, and some other time.

Mr. MARQUAM.—I will withdraw that question and ask another one.

Q. You say that you did tell Mr. Dodge that the

(Testimony of Mrs. Exena Herrington.)

first time that you had ever heard about Wooldridge having anything to do with your daughter, any improper relations, was after the girl had been up to the District Attorney's office. Did you tell Mr. Dodge that? Do you understand the question?

A. No.

Q. I will try to put it a little plainer. I understood you to say a little while ago and admit that after Mr. Dodge was talking to you about this matter, trying to find out what you knew about the case, that you told him, in answer to his questions, that you had never heard or known anything about Laura and Mr. Wooldridge having anything to do with each other until after Laura had been up to the District Attorney's office and came home. Did you tell him that? I understood you to say a while ago that you did. A. No.

Q. You didn't tell Mr. Dodge that? [416]

A. Mr. Dodge asked me—He asked me if Mr. Wooldridge—if I thought that Mr. Wooldridge is guilty. I said yes.

Mr. MARQUAM.—Just a minute. You can answer that. Go ahead and tell your version of it, what was said between you and Mr. Dodge.

A. He said—I told him that sometimes I think he is guilty, and sometimes I am not—that I can't think because I worry so.

Q. You told him that sometimes you think he was, and sometimes you think he was not? A. Yes.

Q. What else did you tell him, if anything?

(Testimony of Mrs. Exena Herrington.)

A. I told him what Laura told me, what she told me.

Q. Now, didn't you tell Mr. Dodge that you had never heard anything about Mr. Wooldridge and Laura having any improper relations with each other, or having been together as you express it, until after Laura had come from the District Attorney's office? Didn't you so tell him—Mr. Dodge?

A. Well, I told him—(interrupted).

Q. Just pardon me. Just answer the question yes or no. If you did tell him that, say yes; if you didn't, say no; then you will be permitted to explain afterwards. A. I don't remember if I did or not.

Q. You might have told him that?

A. I might, I don't remember.

Q. Everything you told Mr. Dodge at that time was true, was it? What I mean by that, Mrs. Herrington; you were [417] not trying to mislead Mr. Dodge; you were trying to tell him the truth as you knew it when you talked with him.

(Plaintiff's attorney objects as irrelevant, incompetent and immaterial, and not cross-examination. Objection overruled.)

Q. Do you understand the question? A. No.

Q. I will explain it in this way, Mrs. Herrington. When you were talking with Mr. Dodge, and he was asking you questions about this, you intended as far as you could to tell him the truth, did you?

A. Yes.

Q. And you did tell him the truth as far as you knew it? A. Yes.

(Testimony of Mrs. Exena Herrington.)

Q. I will ask you one more question along this line. It is a little more specific than the other. Didn't you tell Mr. Dodge that Laura had never said anything to you about having anything to do with Mr. Wooldridge— A. Yes.

Q. —until after she came back from the District Attorney's office? A. Yes.

Q. You told Mr. Dodge that? A. Yes.

Q. That was true, was it? A. Yes.

Mr. MARQUAM.—That is all the cross-examination.

Mr. ROTH.—That is all. [413]

Testimony of J. P. Norris, for Plaintiff.

J. P. NORRIS, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. J. P. Norris.

Q. Where do you reside?

A. On Ester creek, 4 below.

Q. Were you a member of the late grand jury?

A. I was.

Q. What position did you occupy there?

A. Foreman.

Q. Do you know J. P. Rose?

A. I do.

Q. Did he appear before the grand jury as a witness in the case of United States against W. H. Wooldridge? A. He did.

Mr. MARQUAM.—(To Mr. Roth.)—Do you ex-

(Testimony of J. P. Norris.)

pect to offer evidence on the part of the witnesses to any testimony given before the grand jury?

Mr. ROTH.—Yes, sir.

(Mr. Marquam, for defendant, objects for the reason that it is incompetent, irrelevant, immaterial, an attempt to impeach their own witness; and for the special and specific reason that under the instructions of the Court given to the grand jury we are prohibited and deprived of the right of consulting and asking any grand juror as to anything that occurred in the grand jury-room.)

The COURT.—If you wish to make an argument, I will have the jury withdraw.

Mr. MARQUAM.—Yes.

(The Court admonishes the jury as usual, and orders them to withdraw to the jury-room, and they withdraw from the courtroom in charge of the bailiffs.) [419]

Mr. MARQUAM.—While the Court has instructed the grand jury and solemnly impressed upon them the necessity of keeping secret the proceedings before the grand jury, I dare say they have observed that injunction. I know that it is true, for the reason that last night it was reported to me as having come from the clerk of this court that grand jurors were going to be summoned to testify as to what occurred in the grand jury-room in regard to Mr. Rose's testimony; and upon the strength of that information, I knew not whether it was authentic or whether or not it was reliable, I met a couple of grand jurors and I asked them if they were at liberty, under their

(Testimony of J. P. Norris.)

instructions, to answer me what the testimony of Mr. Rose was before the grand jury, and they said no, they couldn't do it; and they wouldn't do it. Now, the District Attorney has all that information at hand, and he was present. He has the liberty of talking with every member of the grand jury as to what their recollections are. The Court would readily, from a practical standpoint, understand that where such a mass of testimony has come before the grand jury in the investigation of the offenses that have been investigated before the grand jury where indictments have been returned, that it is quite probable that no member of the grand jury's memory would be clear and distinct; it would be more or less hazy and vague;—some more distinct than others.

The COURT.—Just a minute.

Mr. MARQUAM.—It is true, your Honor—

The COURT.—Just a minute. A member of a grand jury, under the statute, may be required by any Court to disclose the testimony of a witness.

Mr. MARQUAM.—It is entirely in the discretion of the Court, under the circumstances of the case.

* * * [420] I say now that if, by an order of this Court, I can be placed in a position so that these men (grand jurors) will not be subect to contempt of court, so that they will feel at liberty to talk with me and answer such questions as they might answer with reference to Rose's testimony, I would have no objection. * * *

The COURT.— * * * It seems to me that it

(Testimony of J. P. Norris.)

is perfectly proper and the right thing to do for this grand juror to testify in this case; and your motion (to Mr. Marquam) will therefore be denied.

Mr. MARQUAM.—We except.

The COURT.—Exception allowed.

Mr. MARQUAM.—Would the Court make an order—(interrupted).

The COURT.—Before you make the request, anticipating what you will say, do you think for a moment that the Court would make such an order as you have indicated might be made? That certainly would be an abuse of discretion and unprecedented in the history of the trial of cases.

Mr. MARQUAM.—I don't think so. I didn't mean to say that they should be permitted to discuss generally the proceedings before the grand jury. I am simply talking about the testimony of a grand juror with reference to the testimony of Mr. Rose, that being the person who is being investigated.

The COURT.—The Court would never make such an order, unless it incorporated in the order that the grand juror and the one interrogating him would be in the presence of the Court, when the investigation was made.

Mr. MARQUAM.—We will submit to that.

Mr. ROTH.—I don't think the Court has any jurisdiction to make such an order.

The COURT.—Call the jury. [421]

(Jury returned into court, and trial resumed.)

Mr. ROTH.—Q. Mr. Norris, at the time that Mr. Wooldridge—I mean Mr. J. P. Rose—appeared

(Testimony of J. P. Norris.)

before the grand jury in the case in question, during this term of court, was Mr. Rose sworn to tell the truth, the whole truth and nothing but the truth—

A. He was.

Q. —by the foreman of the grand jury?

A. By the foreman of the grand jury.

Q. At that time did Mr. Wooldridge testify in substance—

A. Mr. Rose?

Q. I mean Mr. Rose, testify in substance as follows: “Wooldridge asked me about Laura while I was lying on the bed, and said he wanted to, or gave me to understand that he wanted to have sexual intercourse with Laura, and that I answered and said: ‘I would not have anything to do with her until after the grand jury gets through. That the grand jury would get hold of a thing of that kind and would investigate it.’ And that I said, ‘It would not be safe,’ and I further said, ‘In order to get at that, they would take her up to Roth’s office, and then they would take her to one of the assistants, and then back down to the grand jury-room again, and they would sweat her until she would have to tell it’ ”?

(Mr. Marquam, for defendant, objects to the question and the testimony on the ground that it is incompetent, irrelevant and immaterial, for all the reasons suggested to the Court while the jury was absent, and for the further reason that the proper foundation for this impeaching question has not been laid. Objection overruled. Defendant asks and is given an exception.)

A. That is the substance of the evidence he gave

(Testimony of J. P. Norris.)

before the grand jury. [422]

Q. I will ask you further, Mr. Norris, if at that time and place, while he was under oath before the grand jury, he testified in substance as follows: "He (referring to W. H. Wooldridge), saw a key on the wall and asked me if that was the key to the building, and I told him that was the front door key"?

(Defendant objects to the question for the reason that it is incompetent, irrelevant and immaterial, and for the further reasons stated in the presence of the Court in the absence of the jury; for the reason that the proper foundation has not been laid for this as an impeaching question. Objection overruled. Defendant excepts, and is allowed an exception.)

A. Wooldridge asked Rose if that was not the key—

Q. Yes? A. —hanging on the wall—

Q. Yes? A. —of the door, the key to the door.

Q. Yes? A. Yes.

Mr. ROTH.—You may cross-examine.

Cross-examination.

By Mr. MARQUAM.—I now move that both of these questions and answers be stricken for the reasons assigned in the objections made.

(Motion denied. Defendant excepts. Exception allowed.)

Q. How many witnesses testified before the grand jury during the time that you were foreman of the grand jury?

(Plaintiff objects as irrelevant, incompetent, im-

(Testimony of J. P. Norris.)

material and not cross-examination. Objection sustained.)

Mr. MARQUAM.—Will the Court permit me to state the reason for the question? It is to test this witness' memory and recollection.

The COURT.—The Court has ruled on the matter.
[423]

Mr. MARQUAM.—I would respectfully request of the Court that when an objection is made of that kind that I be permitted to state, at least sustain my question by at least an explanation as to what the purpose of it is. I think that counsel have that right, at least, to be heard to that extent. We except to the ruling of the Court.

The COURT.—Exception allowed.

Mr. MARQUAM.—Q. It is true that very many witnesses, without naming them or without designating what cases they are in, many witnesses testified before the grand jury at that session of court which you have testified to?

(Plaintiff objects on all the grounds stated in the last objection. Sustained. Defendant excepts. Exception allowed.)

Q. When did Mr. Rose testify before the grand jury?

A. I couldn't say exactly, positively, but I think it was along about—let's see. We convened on the 8th. Along about the middle of the—I judge about Thursday, something like that, I think.

Q. I don't know what week you are talking about.

(Testimony of J. P. Norris.)

A. I think along about the 17th or 18th of the month.

Q. Have you refreshed your memory from any memoranda that you have made, since Mr. Roth has talked to you about being a witness in this matter?

A. I have.

Q. Did Mr. Roth, prior to your coming upon the stand, show you this written statement and read it over to you, or did you read it?

A. He read it to me and I asked him the date.

Q. When did he read it to you? [424]

A. To-day. I didn't arrive here until noon, about 12 o'clock.

Q. You were subpoenaed for this—(interrupted).

A. I was called in and subpoenaed after I got in.

Q. For the purpose of being a witness in this particular matter. A. I should judge so.

Q. From Ester Creek?

A. From Ester Creek, yes.

Q. And this statement that Mr. Roth had before him from which he read when he questioned you just now was read to you in his office just before you came on the stand, or some time to-day?

A. It was, yes, sir.

Q. Just tell this jury in your own language what Mr. Rose said in reference to this particular matter, and what he said Mr. Wooldridge said.

A. Well, now, to the best of my recollection—(interrupted).

Q. Let me inquire before you commence to testify, whether you are proposing to testify accurately, or

(Testimony of J. P. Norris.)

just give the substance of it. Can you give his language?

A. No, I can't give his exact language, but I can give the substance.

Q. What was the first question with reference to this matter that you asked Mr. Rose?

A. I didn't ask him any questions with reference to that. Do you want to know what Mr. Roth did?

Q. I want the first question that Mr. Roth asked him.

A. I wouldn't exactly say what the first question was, but I can give you, following the question, the answer—the answer more than I can the question asked; in other words, the answer that Mr. Rose gave. [425]

Q. Can't you remember what Mr. Roth asked him?

A. Not exactly, no; but I can give the answer.

Q. Do you remember the second question he asked him?

A. I can give the answer pretty near, that he made—the statement that he made.

Q. Can you tell this jury any question that Mr. Roth asked him?

A. Well, if I give the answer he made, it will almost signify the question.

Q. You just answer my question: Can you tell this jury any question that Mr. Roth asked him?

A. Well, now, let's see. Perhaps I can.

Q. Answer the question. If you can give one, give it.

A. No, I can't give the question.

Q. But when Roth asked you if that was the sub-

(Testimony of J. P. Norris.)

stance of his testimony—(interrupted).

A. I can, and I can repeat almost the substance of his testimony.

Q. And you stated it for that purpose—

A. No, sir, I have not.

Q. Can you give the testimony of every witness that came before the grand jury, in that way, too?

A. Almost—(interrupted).

(Plaintiff objects as irrelevant, incompetent, immaterial and not cross-examination. Objection sustained. Defendant excepts. Exception allowed.)

A. You see, can I say one question?

Mr. ROTH.—The objection is sustained.

Mr. MARQUAM.—Don't tell anything except what you are asked. A. That is all right.

Q. Can you give the testimony of any witness outside of Mr. [426] Rose that testified before the grand jury?

(Plaintiff objects on all the grounds last stated.)

Q. Are you able to do it? I am not asking you to give it.

(Plaintiff objects on all grounds stated in last objection.)

A. Yes.

Q. What is your business? A. A miner.

Q. You live out at Ester Creek?

A. I live on Ester Creek, 4 below, yes, sir.

Q. A married man? A. Yes.

Q. Son-in-law of Mr. Harris? A. Yes, sir.

Q. Mr. Harris is Mr. Deal's particular friend?

(Plaintiff objects as not cross-examination. Sus-

(Testimony of J. P. Norris.)

tained. Defendant excepts, and is allowed an exception.)

Q. When you were in town where did you stop while you were foreman of the grand jury?

(Plaintiff objects on the ground last stated. Sustained. Defendant excepts, and is allowed an exception.)

Q. I will ask you the leading question—(interrupted).

The COURT.—You need not ask the leading question if the leading question is to be founded upon the question to which the objection has been sustained.

Mr. MARQUAM.—I desire to show—(interrupted).

The COURT.—You may conduct your examination and cross-examination, and not something else.

Mr. MARQUAM.—I have a right to show this man's situation, his interest, his connections and his friendships, to show bias and prejudice.

(Argument, and the Court directs Mr. Marquam to come to the desk, with the stenographer and District Attorney, if he wishes to make an offer, and, thereupon [427] they go to the desk of the Court, where, out of the hearing of the jury, the following occurred:)

Mr. MARQUAM.—We offer to prove by the cross-examination of this witness, and by his own answers, that, during the time he was foreman of this grand jury, he lived with and continually associated with Mr. Thomas Deal, the Postmaster of the town of Fairbanks and a strong personal and political friend

(Testimony of J. P. Norris.)

of L. T. Erwin, United States marshal, whose chief deputy, at the morning session, testified that he had attempted to cause Mr. Wooldridge's removal from the employment of the Alaska Railroad Commission. We also desire to show by the cross-examination of this witness that he was told or informed by Mr. Deal, prior to the subpoenaing and summoning of the grand jury, that he, the said Deal, could get him on the grand jury, and would use his efforts so to do.

The COURT.—Is that your offer?

Mr. MARQUAM.—That is my offer.

The COURT.—Denied.

Mr. MARQUAM.—We save an exception.

The COURT.—Exception allowed. [428]

Testimony of H. N. Shead, for Plaintiff.

H. N. SHEAD, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Shead, were you a member of the grand jury for the regular February, 1916, term of this court?

A. I was.

Q. Were you present in the grand jury at the time that Mr. J. P. Rose appeared as a witness before that body? A. Yes, sir.

Q. State whether or not that Mr. Rose was regularly sworn to testify there.

A. I didn't catch the first part of that question.

Q. State whether or not Mr. Rose was regularly sworn to testify to the truth, the whole truth and

(Testimony of H. N. Shead.)

nothing but the truth before that body.

A. Yes. He was.

Q. By whom was he sworn?

A. By the foreman.

Q. The foreman of the grand jury?

A. The foreman of the grand jury, yes, Mr. Norris.

Q. At that time I will ask you to state whether or not Mr. J. P. Rose testified in substance as follows: "Wooldridge asked me about Laura while I was lying on the bed, and said he wanted to, or gave me to understand that he wanted to have sexual intercourse with Laura, and that I answered and said, 'I would not have anything to do with her until after the grand jury gets through; that the grand jury would get hold of a thing of that kind and investigate it,' [429] and that I said it would not be safe, and I further said, 'in order to get at that they would take her up to Roth's office, and then they would take her to one of the assistants, then back down to the grand jury-room again, and they would sweat her until she would have to tell it' "?

(Defendant objects to the question as irrelevant, incompetent and immaterial; that the proper foundation has not been laid; and for all the reasons presented to the Court in the absence of the jury in support of defendant's objection to the introduction of the testimony of the witness Norris. Objection overruled. Defendant excepts, and is allowed an exception.)

A. Yes, sir, he did.

Q. At that time and place did he further testify

(Testimony of H. N. Shead.)

in substance: "He," referring to Mr. Wooldridge, "saw a key on the wall and asked me if that was the key to the building, and I told him that was the front door key"?

(Defendant makes the same objection and the Court makes the same ruling and allows an exception.)

A. Yes, sir, he did.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. MARQUAM.)

Q. Mr. Shead, have you talked with the District Attorney about this subject of your testimony before coming into court, and if so, when?

A. Last evening.

Q. Did Mr. Roth read to you, or show to you this statement purporting to be signed by Mr. Rose?

A. No, sir he did not. [430]

Q. Did he read from it? A. No, sir.

Q. Where did you talk with Mr. Roth?

A. In the office in the store.

Q. Did he have a question written down?

A. At that time?

Q. Yes. A. No, sir.

Q. Will you tell the jury the question which you say he asked you when he came into the office in the store?

A. I don't know whether he asked me any questions or not at that time.

Q. You said you had a conversation there.

A. Yes, sir.

(Testimony of H. N. Shead.)

Q. It was for the purpose of ascertaining from you what Mr. Rose had testified to before the grand jury with reference to a certain subject, was it not?

A. Yes, sir.

Q. Now he necessarily would have asked you some question. Now what was it, if he did?

A. Well, I can't put that just that way.

Q. Well, if you remembered what Mr. Rose's testimony was before the grand jury?

A. I was in the front end of the store and he came in, and wanted to speak to me, and I said "Step in the office," and we went into the office there, and he was going to summons me as a witness, and I said "Yes, I knew that."

Q. How did you know it? [431]

A. Because Joe Miller had told me.

Q. Pardon me. Maybe we can simplify matters. Did Joe Miller have this statement? A. No, sir.

Q. Go ahead.

A. As near as I can remember of him asking me a question at all it was, if I knew the reply, Mr. Rose made in regard to having sexual intercourse with this girl.

Q. Whose question? In reply to whose question?

A. In reply to the question that was asked him in the grand jury-room.

Q. By whom?

A. Well now, I don't know. He didn't state by whom or anything of that kind. I don't know whether it referred to a question he asked him, or the foreman of the grand jury.

(Testimony of H. N. Shead.)

Q. You understood Mr. Roth asking you what Mr. Rose had said about Wooldridge telling him about having had sexual intercourse with this girl.

A. I understood Mr. Roth to ask me if I knew Mr. Rose's reply to the question when it was asked him.

Q. What question?

A. As to Wooldridge having sexual intercourse with this girl.

Q. Did Mr. Roth put it that way?

A. I don't think he did in those words.

Q. I want to get—(interrupted).

A. That was only last night. That was last night.

Q. When was it that you listened to the testimony of J. P. Rose in the grand jury?

A. Two or three weeks ago.

Q. Necessarily your recollection of Mr. Roth's question last [432] night would be keener in your memory than the question that was asked and answered two or three weeks ago, wouldn't it, Mr. Shead?

(Plaintiff objects as irrelevant, incompetent, immaterial and argumentative. Objection sustained. Defendant asks and is given an exception.)

Q. I will ask you this question: Aren't you able more clearly to recollect what Mr. Roth asked you last night, and what you said, than what was asked Mr. Rose, and what he said two or three weeks ago?

A. I think I can recollect both of them. As far as that is concerned, I don't think he asked me a direct question.

Q. Well, what do you mean by a direct question?

(Testimony of H. N. Shead.)

A. I don't think he asked me right out that same question that you asked me about there.

Q. All right. I don't know what he asked you or what you said. All I want to know is to find out last night what he asked you, what he asked you, what question he asked you, and what answer you gave him at that time?

The COURT.—The witness has twice told you that he didn't think he asked him a direct question.

Mr. MARQUAM.—Then, an indirect question.

Q. Did he ask you an indirect question?

A. Then we talked for a minute, and he wanted to know what I remembered about his testimony.

Q. All right. You just tell this jury what you told him at that time.

A. Well, I reviewed the testimony as well as I could.

Q. What did you say?

A. I said that Rose testified that this man came in there where he was lying on the bed reading; this man walked back [433] and gave him to understand that he had a date there with this girl. Then there was something said in reference to a key. And then Rose asked him if he was to meet this girl there, and told him that he was putting himself in a bad position, because the grand jury was in session at that time.

Q. That is your independent recollection of what that testimony was before the grand jury?

A. Up to that point, yes, sir.

Q. Up to that point. Was there more of it?

(Testimony of H. N. Shead.)

A. Then Mr. Roth and I talked that over.

Q. But that was your answer to Mr. Roth last night? A. Yes, sir.

Q. Is that your recollection now as to just what was said by Mr. Rose with reference to that subject in the grand jury-room?

A. As far as that, it was, up to that point.

Q. What was his further testimony with regard to that subject in the grand jury-room? You say "up to that point." Now if he went further upon that particular subject, what was that?

A. He had admitted that he had made an appointment with this girl there at that time.

Q. You have already testified to that.

A. Then Mr. Roth put this question to him in some certain way, some such a way as that from memory.

Q. You are telling now what occurred in the grand jury-room, from your recollection, are you?

A. No. This is what occurred last night.

Q. All right. Go ahead. [434]

A. That was all there was of it.

Q. That was all there was of it? A. Yes.

Q. Now, did you—What you told Mr. Roth at that time was your best independent recollection of just what Mr. Rose had testified to, was it, with regard to this particular subject—the girl being in the shop—meeting the girl in the shop?

A. I don't know as it was my best. It was pretty close to it.

Q. Is that your best recollection now as to what Mr. Rose testified to before the grand jury?

(Testimony of H. N. Shead.)

Mr. ROTH.—On this one subject—

Mr. MARQUAM.—Be still, Mr. Roth.

Mr. ROTH.—If the Court please—(interrupted).

Mr. MARQUAM.—I object to Counsel interrupting me in my examination.

Mr. ROTH.—I object to the question unless it is limited to the identical point in this question.

The COURT.—You may answer the question if you remember it. A. What is the question?

Q. (Last question read by reporter.)

A. In reference to that point there?

Mr. MARQUAM.—Q. With regard to the girl and Mr. Wooldridge, and what was said by Mr. Wooldridge while Rose and he were talking in his shop.

Mr. ROTH.—We object to that as irrelevant, incompetent, immaterial, and not cross-examination, because it is not confined to the subject testified to by the witness.

The COURT.—It must be limited to the subject.

Mr. MARQUAM.—That is the subject. [435]

The COURT.—The question which you asked could be answered by the witness without going over a whole lot of other things.

Mr. MARQUAM.—I limited it with regard to Wooldridge and the girl.

The COURT.—With regard to the subject matter of the question which was propounded.

Mr. MARQUAM.—I will qualify it in that way.

Q. With regard to the subject matter contained in the leading question which Mr. Roth propounded to you, is that what you have testified—got through tes-

(Testimony of H. N. Shead.)

tifying about? Is that your entire, best, and clearest recollection of what was said by Mr. Rose?

A. I knew that this question had been asked, but I couldn't remember the question or the form that that question was asked in. This question that was asked of him it was asked before the grand jury.

Q. That question? A. Yes, sir.

Q. In those identical words?

A. I can't tell that it was in the identical words or not. I couldn't remember that.

Q. What do you mean by "that question was asked of him in the grand jury-room"?

A. I mean that that question was asked of Mr. Rose in the grand jury-room in sum and substance, was put to him, that he had an appointment with this girl there for the purpose of having sexual intercourse with her, and Mr. Rose admitted that Mr. Wooldridge—Mr. Rose said Mr. Wooldridge had admitted that to him. [436]

Q. Had admitted it to him?

A. He said it was right, yes.

Q. What else? We are getting a little different story now. Go ahead and finish your answer.

A. That is the answer to it.

Q. That is your best recollection of it?

A. Of what took place in the grand jury-room, yes.

Q. What was said in the grand jury-room with regard to this subject that is contained in the question which Mr. Roth propounded to you, is that true?

A. Mr. Rose admitted it.

(Testimony of H. N. Shead.)

Q. Admitted what? A. That they were true.

Q. That what were true?

A. Those questions that were asked him.

Q. That is what I would like to get at: Just what questions were asked him. Can you tell?

A. The questions that were embodied in that that Mr. Roth read there.

Q. And those questions that are embodied in that paper that Roth read to you were asked of him in the grand jury-room?

A. The sum and substance of it, yes, sir.

Q. Don't you know Mr. Shead—Do you know what that paper is— A. No, sir.

Q. —that he read from? A. No, sir.

Q. You don't know anything about it. You don't know what it is. Did you ever see it before?

A. I haven't seen it now.

Q. You might not see it now, and have seen it before. [437]

A. No, I never saw it before.

Q. The truth of the matter is that you have a recollection of the testimony of Mr. Rose before the grand jury upon this question, and you have heard dozens and dozens of questions there, and you have a recollection of it in substance, but you don't pretend to be able to repeat to this jury what questions were asked and just how they answered them.

A. Word for word? Not word for word.

Q. Or the whole substance. You would not try to say that you could do that.

A. Well, I tried to say that I could answer the substance of those questions there that were asked of

(Testimony of H. N. Shead.)

him—his answers to the substance of those questions there.

Q. You don't pretend to tell this jury that your recollection is so keen and accurate that you can tell what every witness before the grand jury testified to accurately, even in substance what any particular question was.

(Plaintiff objects as irrelevant, incompetent, immaterial and not cross-examination. Objection sustained. Mr. Marquam states that it is for the purpose of testing this witness' memory, and asks and is given an exception.)

Mr. MARQUAM.—That is all.

Redirect Examination.

(By Mr. ROTH.)

Q. Mr. Shead, Mr. Marquam asked you about questions that were propounded, and asked you this question:—No. Do you remember whether or not I had a paper there that Mr. Rose stated was his statement, at the time I questioned him? [438]

A. In the grand jury-room?

Q. Yes.

(Defendant objects as incompetent, irrelevant, immaterial, hearsay, and no foundation having been laid for the question. Objection overruled. Defendant asks and is given an exception.)

A. I remember he had a paper there and read that question from it.

Q. And do you remember whether or not Mr. Rose stated that that was his statement? A. Yes, sir.

(Defendant objects on the same grounds last

(Testimony of H. N. Shead.)

stated. Objection overruled. Defendant excepts and is allowed an exception.)

Mr. ROTH.—That is all.

Mr. MARQUAM.—That is all.

Testimony of R. M. Crawford, for Plaintiff.

R. M. CRAWFORD, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Crawford, were you a member of the grand jury of the regular February, 1916 term of this court?

A. I was.

Q. What position did you occupy as a member of that grand jury? A. I was secretary.

Q. Do you know J. P. Rose? A. I do.

Q. Did J. P. Rose appear as a witness before the grand jury in the case of *The United States against W. H. Wooldridge*? A. He did.

Q. Was he regularly sworn to testify? [439]

A. He was.

Q. By whom? A. By the foreman.

Q. At that time did he testify in substance as follows: Wooldridge asked me about Laura while I was lying on the bed and said he wanted to, or gave me to understand that he wanted to have sexual intercourse with Laura, and that I answered and said, "I would not have anything to do with her until after the grand jury got through. That the grand jury would get hold of a thing of that kind and would

(Testimony of R. M. Crawford.)

investigate it, and that I said: "It wouldn't be safe," and I further said "In order to get at that, they would take her up to Roth's office, and then they would take her to one of the assistants, and then back down to the grand jury-room again, and they would sweat her until she would have to tell it"?

(The defendant objects as irrelevant, incompetent and immaterial, and also for all of the reasons assigned in the absence of the jury to the questions propounded to the witness J. P. Norris, and for the further reason that the proper foundation for the introduction of this testimony has not been laid. Objection overruled. Defendant excepts and is allowed an exception.)

A. Yes. In substance.

Q. And did he further at that time testify in substance: "He, referring to Mr. Wooldridge, saw a key on the wall and asked me if that was the key to the building, and I told him that was the front door key"?

A. Yes. In substance.

Mr. ROTH.—You may cross-examine. [440]

Mr. MARQUAM.—We move that both of these questions and answers be stricken for the reasons already assigned.

The COURT.—Motion denied and exception allowed.

Cross-examination.

(By Mr. MARQUAM.)

Q. All you can say is that that is the substance, or part of the substance, or maybe all of the substance

(Testimony of R. M. Crawford.)

of the testimony that you heard before the grand jury?

A. You mean J. F. Rose's testimony. That is part of the substance of J. P. Rose's testimony. Yes.

Q. You listened to the testimony of a great number of witnesses, did you not, before the grand jury?

(Plaintiff objects as irrelevant, incompetent and immaterial, and not cross-examination. Objection sustained. Defendant excepts and is allowed an exception.)

A. (No answer.)

Q. When was this testimony given?

A. It was given while the grand jury was in session, with reference to investigating the case of Mr. Wooldridge.

Q. When was that? A. What date?

Q. Yes.

A. Why, I don't remember. We met on the eighth and we run along until—we sat twenty-one days, and it was—but just what day that testimony was given, I don't remember.

Q. Did I understand you to say you were secretary of the grand jury?

A. Yes: If that is the proper title for it. [441]

Q. Well, did you make notes of the testimony, as such secretary?

A. I made some notes. I didn't make full notes at all, because I am not a shorthand reporter.

Q. Are those notes destroyed?

A. I don't know. I turned them over to Mr. Roth.

Q. At the conclusion of the—(interrupted).

(Testimony of R. M. Crawford.)

Mr. ROTH.—I have the notes.

Mr. MARQUAM.—I would like to have those notes produced.

Mr. ROTH.—I don't object to it.

Mr. MARQUAM.—With reference to this only: about this question now under investigation.

The COURT.—Very well.

Mr. ROTH.—I won't object to it at all.

(Here the Court takes a short recess until four P. M. and after recess, defendant and jury being present, the trial was resumed.)

Mr. ROTH.—I want to give it to him and have him read on this point. (Referring to witness.)

Mr. MARQUAM.—I ask that the notes be produced.

Mr. ROTH.—I refuse to produce the notes. I will hand them to the witness.

Mr. MARQUAM.—I object to these notes being handed to the witness. I want to inspect those notes.

Mr. ROTH.—You can't inspect them right now.

Mr. MARQUAM.—I can if the Court will let me.

Mr. ROTH.—I don't think the Court will let you, because there are other things there that are not permissible.

Mr. MARQUAM.—Take the scissors and cut them off then.

(The Court examines the notes referred to, calls Mr. Roth and Mr. Marquam to his desk, and they examine the portion of said notes indicated by the Court.) - [442]

(Testimony of R. M. Crawford.)

Mr. MARQUAM.—Do you desire to have the witness identify them?

The COURT.—Yes.

Mr. MARQUAM.—Is that all there is, from your inspection of them, upon that matter?

The COURT.—Yes.

Mr. MARQUAM.—Probably Mr. Crawford will know about that. (Papers referred to handed to the witness.)

Q. Are those notes? A. They are.

Q. Were those made by you at the time the testimony was given? A. They were.

Q. And it is as near—would you say that that statement written there, you would rely more upon than your own memory unrefreshed by it?

A. It is good as far as it goes, Mr. Marquam. I was endeavoring to take down some notes, and at the same time since the man talked reasonably rapidly, and I wrote fairly slowly I only got a portion.

Q. As far as it goes—(interrupted).

A. As far as it goes, it is true.

Q. As far as it goes, it would be in your opinion more accurate than your memory of the incident at that time.

A. Yes, except I possibly briefed them up. I would make a brief mention of something that would cover a good many words. I would put it in my own language briefly so as to keep just simply a note. (Said notes are handed to the Court.)

Q. Let me ask you: When Mr. Roth talked to you

(Testimony of R. M. Crawford.)

about this matter, where did you see Mr. Roth?
[443]

A. I saw him in his office about a quarter of two to-day.

Q. And what was said?

A. He read a question that he was going to ask me in court this afternoon.

Q. From a typewritten piece of paper?

A. Yes, from a typewritten piece of paper.

(Mr. Dodge examines the notes of the witness heretofore referred to, or the portion of them indicated to him by the Court.)

Q. Was this in Mr. Roth's office?

A. Yes. In Mr. Roth's office.

Q. What paper was it read from? Was it read from a typewritten sheet?

A. Yes. Read from a typewritten sheet.

Q. And you meant to say, in regard to your answer to that question, that that, from your recollection, was the substance of what was stated?

A. That is all. Yes, sir.

Q. I presume it would have been very difficult for you, if not asked and read from a paper if that was the substance, to have repeated all that particularly from memory, would it not?

A. I probably would have used my own language. A person will in stating what was said. And it wouldn't have been in those words, perhaps.

Mr. MARQUAM.—We would like to read those notes to the jury on that particular subject. I don't care—if Mr. Roth is afraid they will get away from

(Testimony of R. M. Crawford.)

him, I don't want to introduce the paper, but I would like to have it read, and we can substitute a copy of it.
[444]

Mr. ROTH.—Just on this one point.

Mr. MARQUAM.—For what it is worth. I take it the jury would have more reliance upon these notes than they would upon oral testimony.

The COURT.—Mr. Stewart, you may read all you can find on this page (indicating). Down to where it is turned down.

SIDNEY STEWART, Deputy Clerk, reads as follows: "9th day. J. P. Rose." That is away up in the corner, evidently the page. "Sworn. Runs repair shop. Saw Laura Herrington and Wooldridge at my shop a little before eight o'clock night before last. Wooldridge said 'are you going to the picture show'; I said 'No.' We talked about Laura Herrington being wild. He intimated to me he would have sexual intercourse with her. I told him it was a very unsafe thing to do. She said 'It is an unsafe thing to do. Someone is following me.' Then I went out and saw deputy marshals everywhere; went back and told her to get out. Monday evening Wooldridge asked me to buy him a fifty-cent bottle of whiskey. I did."

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all.

(Here the Court takes a recess until four-fifteen P. M. to-day, and the jury, after being admonished by the Court withdraw from the courtroom. At four

(Testimony of R. M. Crawford.)

P. M. jury returned to the courtroom, and the defendant and the attorneys being present, the trial was resumed.) [445]

Testimony of Tom Utigaard, for Plaintiff.

TOM UTIGAARD, a witness for plaintiff, after being duly sworn testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Utigaard, were you a member of the grand jury— A. Yes, sir.

Q. —that sat for this term of court, this February, 1916 term of this court? A. Yes, sir.

Q. Were you present at the grand jury when J. P. Rose testified in the case of the United States against W. H. Wooldridge? A. Yes, sir.

Q. Was Mr. Rose regularly sworn?

A. Yes, sir.

Q. By whom? A. By Norris, the foreman.

Q. At that time did Mr. Rose testify in substance as follows: "Wooldridge asked me about Laura while I was lying on the bed and said he wanted to, or gave me to understand, that he wanted to have sexual intercourse with Laura, and that I answered and said 'I would not have anything to do with her until after the grand jury gets through; that the grand jury would get hold of a thing of that kind and would investigate it,' and that I said 'It would not be safe,' and I further said 'In order to get at that, they would take her up to Roth's office, and then they would take her to one of the assistants, and then back down to

(Testimony of Tom Utigaard.)

the grand jury-room again, and they would sweat her until she would tell it.” [446]

(Defendant objects as incompetent, irrelevant and immaterial, for all the reasons assigned to the Court in the absence of the jury against the admission of the same question propounded to J. P. Norris and the answer thereto: for the further reason that the proper foundation has not been laid for such impeaching question. Objection overruled. Defendant excepts. Exception allowed.)

A. He said that.

Q. Did he further testify at that time in substance as follows: He, referring to W. H. Wooldridge, saw a key on the wall and asked me if that was the key to the building, and I told him that was the front door key? A. Yes. He said that.

Mr. MARQUAM.—He answered the question before I could object.

Mr. ROTH.—We will stipulate that your objection may go to this.

The COURT.—The record may show that you made the same objection, and the same ruling, and an exception allowed.

Mr. ROTH.—That is all.

Cross-examination.

(By Mr. MARQUAM.)

Q. Were those questions read to you, Mr. Utigaard, just before coming into court, or some time yesterday? A. No. Not those.

Q. What is that? A. Yes. They was.

(Testimony of Tom Utigaard.)

Q. What did you first say?

A. I said I didn't understand. Well, I said no, but—

Q. You didn't understand the question?

A. Yes.

Q. But now you say yes? A. Yes. [447]

Q. Who by?

A. Mr. Roth asked me if I remembered what Rose said in the courtroom?

Q. Did you remember? A. Yes.

Q. Clearly? A. Yes, I did.

Q. Where were you when he questioned you?

A. He was down in his office.

Q. Up in his office here? A. Yes, sir.

Q. He sent for you and you came up there?

A. Yes, sir.

Q. He then read that question to you—those questions? A. He did.

Q. Or those statements? A. Yes.

Q. Did you say that you did recollect clearly—

A. No.

Q. —what Mr. Rose had testified to prior to his reading those questions to you?

A. I said I recollected correct what he said.

Q. Clearly? A. Yes, sir.

Q. Did you tell this in your own way, and in your own language, what Mr. Rose had testified to, to Mr. Roth? A. No, sir.

Q. He immediately then read those questions?

A. Yes, sir. [448]

Q. And that struck you as about what he testified

(Testimony of Tom Utigaard.)

to? A. Yes, sir. I remember that.

Q. What?

A. I remember distinctly that it was the same.

Q. Just tell the jury what he did testify to.

A. Well, he testified that he said that Wooldridge came in there about around eight o'clock, and he said that he was laying on the bed in the back room, and he, Wooldridge, came in, and he said "You are pretty extravagant for you use the light this time of night. It is after eight o'clock." And he just turned back and turned out the light in the front room, and he came back, and he said he spoke to Rose about Laura Herrington was going to be there that night.

Q. That is, he said that Wooldridge told him that Laura Herrington was going to be there that night.

A. Yes, sir. And he also said, "Don't you use to go to the picture show once in a while?" "Yes," he said, "I do." "Well," he said, "I thought you were going on Monday or Thursday," or something to that effect, and I don't really recollect or really remember what date it was, but it was a couple times a week. And so he—well now—so Laura came in, he told, and she came right back to where they was, and Wooldridge got up and meet her, I don't know whether it was in the door, or outside or inside the door to the back room, and they spoke a few words loud—low there, so Rose said he didn't know what was said.

Q. He didn't know what was said?

A. No. He said they spoke some low words there, but he didn't know what was said. Then Wool-

(Testimony of Tom Utigaard.)

dridge turned around to Rose [449] and said "There is somebody following her." Then so, Rose he said that he got up and put his coat on and went out, and when he came out he said he turned back and spoke to Wooldridge back in through the door and he said, "I should say there is somebody following you. All the deputy marshals in town are here."

Q. That is the substance now—

A. That is about—

Q. Now you are testifying from your own memory—

A. Yes, sir.

Q. —what Mr. Rose said at that time?

A. Yes, sir.

Mr. MARQUAM.—That is all?

WITNESS.—And he furthermore asked about a key there, and that key is supposed to belong to the front door. It was hanging on the wall some place you could see from the bed.

Q. You have given now the substance as you remember it of all of Mr. Rose's testimony relative to his conversation with Mr. Wooldridge about the girl—

A. Yes.

Q. —while they were in his shop?

A. Yes. Just about.

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all. [450]

Testimony of W. W. Pendergraft, for Plaintiff.

W. W. PENDERGRAFT, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Pendergraft, were you a member of the late grand jury which convened here in this term of court, the regular February, 1916, term of court?

A. I was.

Q. Were you present in the grand jury room at the time J. P. Rose came there and testified?

A. I was.

Q. Was J. P. Rose regularly sworn at that time?

A. He was.

Q. By whom?

A. By the foreman of the grand jury, Mr. Norris.

Q. After he had been sworn there did he testify in substance as follows: Wooldridge asked me about Laura while I was lying on the bed, and said he to, or gave me to understand that he wanted to have sexual intercourse with Laura, and I answered and said, "I would not have anything to do with her until after the grand jury got through; that the grand jury would get hold of a thing of that kind and would investigate it," and that I said, "It would not be safe," and I further said "In order to get at that, they would take her up to Roth's office, then they would take her to one of the assistants, and then back down to the grand jury room, and they would sweat her until she would have to tell it?"

(Testimony of W. W. Pendergraft.)

(Defendant objects as incompetent, irrelevant and immaterial, that the proper foundation has not been laid for such impeaching question, and for all the reasons assigned as to the inadmissibility of this testimony in the absence of the jury. Objection overruled. Defendant asks and is given an exception.) [451]

Q. Answer the question.

A. You want to know if I heard him answer that question or those questions?

Q. If that was his testimony in substance?

A. Yes.

Q. Did he further testify at that time in substance: He, referring to W. H. Wooldridge, saw a key on the wall, and asked me if that was the key to the building, and I told him that was the front door key.

(Defendant offers the same objection, and the Court makes the same ruling and allows an exception.)

A. He did.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. MARQUAM.)

Q. Now, you say that he did. What do you mean by that answer, Mr. Pendergraft?

A. Well now, do you want me to tell you just what Mr. Rose or Mr. Wooldridge said about this key according to Mr. Rose's testimony? Is that what you want?

(Testimony of W. W. Pendergraft.)

Q. You said "he did." I just want you to say in your own language what you meant by that answer.

A. I meant that he spoke of a key being on the wall, wanting to know if that was the key to the front door, or to the door around there, I wouldn't say that exactly "front door" but "to the door."

Q. You meant to say by "he did" that he had testified as Mr. Roth had put the question to you; that it was true that this question that Mr. Roth put to you represented to your mind the answer which Mr. Rose had made to the questions [452] that were put to him before the grand jury. Do you understand that?

Mr. ROTH.—In substance.

Mr. MARQUAM.—I wish you would leave this witness alone.

Mr. ROTH.—That was the question, if your Honor please. The question was asked if that was in substance his testimony.

(Objection sustained. Defendant excepts and is allowed an exception.)

Mr. MARQUAM.—Q. Then explain what you meant by your answer "I did" or "he did."

A. I believe I did explain. You want me to re-explain?

Q. I don't think you explained it, Mr. Pendergraft. You may not understand what I am asking you, but I have tried to make it clear, but there is an exception interposed, so I will have to ask the question of you to explain what you meant by the answer "he did."

(Testimony of W. W. Pendergraft.)

A. That he did ask me about a key that was hanging on the wall, if that was—belong to the door. That is the way I would take it as Mr. Roth has placed it.

Q. Did you talk with Mr. Roth prior to coming into the courtroom, that is, since yesterday?

A. Yes.

Q. Where?

A. I talked with him in the office, and I talked with him over in my store.

Q. Since yesterday?

A. Not since yesterday. No, sir. I talked with him in his office since yesterday. Yes, sir.

Q. When did you talk with him in the store?
[453]

A. Last evening.

Q. About this same proposition?

A. About this same proposition.

Q. What did Mr. Roth first ask you, Mr. Pendergraft?

A. He asked me if I remembered about Mr. Rose's testimony before the grand jury.

Q. What did you tell him?

A. I told him I remembered a portion of it.

Q. Did he have any paper with him at that time?

A. I don't know. He didn't show any to me. He didn't present any to me.

Q. Did you repeat to him at that time what Mr. Rose's testimony was before the grand jury?

A. I did, sir.

(Testimony of W. W. Pendergraft.)

Q. What did you tell Mr. Roth at that time that Mr. Rose's testimony was?

A. I told him, as I remembered it just at the time, about Mr. Wooldridge coming into the building, turning the light as he came through the front room, coming back and saying to Mr. Rose that he was rather extravagant having the lights turned on at that time of the night.

Q. Pardon me. I want to interrupt you. Is this what you told Mr. Roth last night at your store?

A. I was repeating to him what I remembered of the proposition.

Q. Go ahead.

A. Then I told him about Mr. Wooldridge speaking to Mr. Rose in regard to this Laura Herrington as I remembered it, and about his answer in regard to the grand jury, and about getting her into the prosecuting attorney's office, and the [454] marshal's office and before the grand jury and so on, and in regard to the key.

Q. Well, now, did you understand Mr. Rose's testimony with regard to what Wooldridge had said to him and he had said to Wooldridge as occurring before Laura Herrington came into the store?

A. What they had to say occurred before Laura Herrington came into the store, as I understand it.

Q. Now just tell the jury what Wooldridge said about Laura Herrington.

The COURT.—You mean what Rose said, don't you?

Mr. MARQUAM.—What Rose said that Wool-

(Testimony of W. W. Pendergraft.)

dridge said. In other words, state, as you remember it, Rose's testimony before the grand jury with reference to what Wooldridge said.

A. Wooldridge came in and he spoke to Mr. Rose in regard to—first, about going to the theatre, as I believe, was his remarks as I remember them; and then spoke to him about Laura Herrington, meeting her there, and Mr. Rose—

Q. Are you using Mr. Rose's language at that particular point?

A. I am using Mr. Rose's language, but I use Mr. Rose's name so as to distinguish him. He was saying—

Q. Pardon me for having interrupted you.

A. He stated to Mr. Wooldridge that it would be very dangerous at this time to be fooling around with this little girl; that the grand jury was in session—

Q. Just before that. I want you to tell the jury again just what Mr. Wooldridge was supposed to have said to Rose, that is according to Rose's testimony, which led up to the statement on the part of Rose that it was dangerous [455] proposition, or whatever it was. Do you understand the question?

A. Why, I understand the question. I thought I was answering it.

Q. Would you just, so as to make it clear, just answer it again?

A. You want me to repeat myself, do you? Is that the idea?

Q. You can call it that. Yes.

(Testimony of W. W. Pendergraft.)

A. Do you want me to go back and repeat myself?

Q. No. Just the remark Wooldridge was supposed to have made, according to Rose's testimony. That is all I care for.

A. Mr. Wooldridge made the remark to him in the first place, as I remember it—it is a hard matter to get everything just in detail as it came along—but he remarked about his going to the theatre, then spoke to him in regard to this little girl meeting him there, and Mr. Rose—

Q. Now, you are through with what Wooldridge said, are you? A. Yes, sir.

Q. All right. Go ahead.

A. You want the rest of it?

Q. I want then what Mr. Rose said.

A. Mr. Rose just stated to him that it would be a dangerous thing for him to be fooling with this little girl at that time, owing to the fact that the grand jury was in session.

Q. Is that all?

A. Then he walked over, as I remember it, to a key hanging on the wall, or on the jamb of the door, something like that, and asked him if that was the key to the door—

Q. Picked it up?

A. It was hanging up, as I remember the testimony, on the wall [456] or on the jamb of the door, somewhere right in the room, and asked him if that was the key to the door.

(Testimony of W. W. Pendergraft.)

Q. Did Rose say he had taken it off the hook or nail?

A. I wouldn't say that it was taken off the nail at all. I don't remember of that being stated.

Q. This was all said before Laura Herrington came in?

A. That was before Laura Herrington came in.

Q. And there was nothing in the way of Mr. Rose's testimony as to what Wooldridge and he had said of this character after the girl came in?

A. No, sir. There was not.

Q. I suppose it is very difficult, Mr. Pendergraft, for you to recollect accurately the testimony given by any witness before the grand jury at this time?

A. In fact, it would be for anyone, I think to get everything accurate by any means.

Q. You are just trying to do the best you can and give the jury the best impression, you might call it, of what occurred there?

A. I ain't caring anything about the impression to the jury. I am trying to tell the jury as I know it of what occurred.

Q. You don't understand me. I don't mean that you are trying to create an impression upon the jury, but you are giving the jury your best impression—I call it impression—or recollection of what you heard Rose say.

A. That is what you wanted, ain't it?

Q. If you will answer my questions instead of arguing with me. Is that true?

A. I am trying to tell you the truth.

(Testimony of W. W. Pendergraft.)

Q. I realize that. I think we all believe that, but we have [457] got to get that before the jury, the questions which I will ask you and your answers. I ask you, and I will ask you again, if the testimony which you have given in this matter at this time, with regard to the conversation which occurred in the grand jury room on the part of Mr. Rose is your best impression and recollection of what was said at that time?

A. I have no impression about it at all.

Q. You haven't any impression at all. Well, what are you giving?

A. I am giving testimony of what Mr. Rose stated before the grand jury.

Q. In the words that he gave them?

A. As near as I can possibly remember them.

Q. That may be true. How near is that?

(Plaintiff objects as irrelevant, incompetent and immaterial and argumentative. Objection sustained. Defendant excepts and is allowed an exception.)

Q. In other words, you are trying to tell the best that you can, giving your best remembrance of it.

Mr. ROTH.—We object—(interrupted).

A. That is all.

Mr MARQUAM.—Q. That is all I am asking you about. You seem to think that I am trying to get you to admit that you are putting the best phase on it, but that is not it at all. That is all.

(Testimony of W. W. Pendergraft.)

Redirect Examination.

(By Mr. ROTH.)

Q. I will ask you to state whether or not you re-collect that there was a paper exhibited by me to Mr. Rose at that time when I questioned him. [458]

A. There was. At least you had one in your hand and read it off to him.

Q. What did Mr. Rose say that that was, that paper that I read, if you remember?

(Defendant objects as leading. Objection overruled. Defendant excepts. Exception allowed.)

A. Well, I can hardly explain just what you—(interrupted).

Q. Did Mr. Rose recognize the paper that I read from, or did he say anything about it?

(Defendant objects as leading. Objection overruled. Defendant excepts. Exception allowed.)

A. He recognized the reading of that paper. Now, there is a little technicality in your question there Mr. Roth, as far as that paper is concerned, but the contents of it he did acknowledge.

Mr. ROTH.—That is all.

Mr. MARQUAM.—That is all.

Testimony of J. J. Buckley, for Plaintiff.

J. J. BUCKLEY, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What official position do you now hold, Mr. Buckley?

(Testimony of J. J. Buckley.)

A. City Clerk of the Town of Fairbanks, Magistrate, and Chief of the Fire Department.

Q. As city clerk, are you in possession of the city records? A. Yes, sir.

Q. Have you the records of the last registration for city election? [459] A. Yes, sir.

Q. Will you turn to the registration of W. H. Wooldridge, if you have it there?

Mr. MARQUAM.—I would like to know the purpose of this, so that we can offer an objection.

The COURT.—You may state the purpose. (To Mr. Roth.)

Mr. ROTH.—I want to show the age of Mr. Wooldridge.

Mr. MARQUAM.—All right.

Mr. ROTH.—Q. Have you a record of his registration? A. Yes, sir.

Q. Was that signed by Mr. Wooldridge?

A. Yes, sir.

Q. Was it sworn to by him before you?

A. Yes, sir.

Q. What is the date of that certificate or that oath? A. The sixth day of November, 1915.

Q. Does that give the age of Mr. Wooldridge?

A. Yes.

Q. What age does it give? A. Fifty-one.

Mr. ROTH.—You may cross-examine.

Mr. MARQUAM.—No cross-examination. [460]

Testimony of Frank B. Hall, for Plaintiff.

FRANK B. HALL, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. Frank B. Hall.

Q. What official position do you hold?

A. Deputy United States Marshal.

Q. Mr. Hall, as such deputy were you instructed to go to the office of Mr. L. K. Pratt during the month of February of this year? A. Yes, sir.

Q. Do you know the date? A. Yes, sir.

Q. What date? A. February the fifteenth.

Q. About what time did you go there?

A. At six-thirty in the evening.

Q. Who was with you? A. Peter McMullen.

Q. Also a deputy marshal? A. Yes, sir.

Q. While you were in there did you see this defendant, W. H. Wooldridge?

A. Yes, sir. Outside.

Q. Where did you see him?

A. Right near the bath-house, on the corner.

Q. Where did he go then?

A. He was coming from down Lacey Street, and when he got to the [461] corner he turned and went into Mr. Dodge's office.

Q. What time was that?

A. That was about twenty minutes to eight.

Q. Did you see him come out of there?

A. I did.

(Testimony of Frank B. Hall.)

Q. What time did he come out of there?

A. It was about twelve minutes to eight.

Q. Where did he go?

A. He went directly across the street, right over to the bath-house, and then he went into Mr. Rose's machine-shop.

Q. Known as Rose's repair-shop? A. Yes, sir.

Q. Do you know Laura Herrington?

A. I know who she is, yes, sir.

Q. Did you see her while you were in Mr. Pratt's office? A. I did, yes, sir.

Q. Where did you see her?

A. She turned the corner of Second at about eight o'clock, turned the corner of Second and went down Lacey toward Mr. Rose's machine-shop.

Q. And where did she go?

A. And went inside—first she went by the place, and then turned around and came back and went in.

Q. What do you say it was that she went in there?

A. Eight o'clock.

Q. Just about eight o'clock? A. Yes, sir.

Q. What did you observe after they went in there?

A. Immediately after she went in—(interrupted).

Q. What did you observe after—(interrupted).

[462]

Mr. MARQUAM.—Let him finish his answer.

Mr. ROTH.—Q. Immediately after Mr. Woolbridge went in there, did you observe anything?

A. Yes.

Q. What? A. The light went out.

(Testimony of Frank B. Hall.)

Q. After she went in there did you observe anything?

A. Nothing about the front of the shop at all. No. I and Mr. McMullen then left the office and went down there.

Q. Did you observe anything there after you got down there with reference to the lights?

A. No, sir.

Q. Nothing at all? A. No lights.

Q. About how long did Laura Herrington stay in there before you saw Mr. Wooldridge again?

A. I think possibly three or four minutes.

Q. A short time?

A. Yes, sir, just time enough for me to leave Mr. Pratt's office, go down to Noble street, down to First, down to McPhee's corner, and I waited there possibly a minute, and then I came up and saw Mr. Rose.

Q. That is J. P. Rose? A. Yes, sir

Q. After you saw them, state what occurred.

A. I walked slowly up from McPhee's corner. The lights being out, I couldn't see whether there was anybody in front or not, in fact I didn't think there was anybody in front. I walked up slowly and got sight of Mr. Rose and Mr. [463] Wooldridge standing in front of the shop. Mr. McMullen was standing up near the corner with another man, and then Mr. McMullen came down, and Mr. Wooldridge, with Mr. Roseburg, that was the man, and we all went into the shop; and Mr. McMullen said to Mr. Roseburg "do you see this little girl here," and at that time there was a light on. I don't know who

(Testimony of Frank B. Hall.)

turned it on, but somebody turned the light on, and then he said, "Do you see this little girl here?" Roseburg said, "Yes." He said, "Do you know who she is?" and Mr. Roseburg said, "Yes." Then we started back to go up the street, and Mr. Miller met us and said, "Take them down to the office. Take Mr. Wooldridge down to the office," and he told me to go back and get Mr. Rose, which I did, and we went down to the office.

Q. Who all went to the office? A. All of us.

Q. Laura too? A. Yes.

Q. All right. What transpired in the office after you got there, if you know? Just state every word that transpired in the office when Rose and Wooldridge and Laura were there?

A. I was not in the private office at all. I don't know a thing that happened there, because I was busy with other work, which I started right in to do.

Q. I will ask you to state whether or not that same evening Mr. Rose was in the private office alone with Mr. Miller and Mr. Berg and Mr. McMullen and yourself and Mr. Wood. A. Yes.

Q. When was that with reference to this first time?

A. This was possibly twenty minutes to half an hour afterwards. [464]

Q. Did Mr. Rose make a statement there?

A. Yes, sir.

Q. Was it reduced to writing? A. It was, yes.

Q. Was signed? A. Yes.

Q. Was it sworn to? A. Yes.

Q. Before whom? A. Before me.

(Testimony of Frank B. Hall.)

Q. As a notary public? A. Yes, sir.

Q. I will show you a document, which is marked Plaintiff's Exhibit Number One, and ask you to state whether or not that is the document that you have reference to? (Hands document to witness.)

A. Yes, sir. This is the statement.

Q. Was that read over to Mr. Rose before he signed it? A. Yes, sir.

Q. Who read it to him? A. I did.

Q. Did you read everything that was in it to him?

A. Yes, sir.

Q. What did he say about it when you read it to him? A. He said that was right.

Q. Can you state to this jury whether or not Mr. Rose understood everything that was in that paper when he signed it?

Mr. MARQUAM.—I object. It is incompetent, irrelevant and immaterial, and calling for a conclusion of the witness.

The COURT.—In so far as it can be answered, it has been answered.

Mr. MARQUAM.—If there is any answer to it, we ask that it be stricken. [465]

The COURT.—“He said that was right” was the answer.

Mr. ROTH.—Q. How was the statement taken down? Just tell the jury how the statement was taken down.

A. Mr. Rose started to tell what had happened when Wooldridge came in, and as he talked Mr. Miller wrote what he said.

(Testimony of Frank B. Hall.)

Q. Yes?

A. And then Mr. Miller read it to him after he had gone a little ways and he would say "Wait a minute. Is that right," and he would read that; and so on until the thing was finished. Then Mr. Miller asked Mr. Rose if he cared to read it, if he would read it. Mr. Rose took the paper and said he hadn't his glasses with him and couldn't read it, so Mr. Rose asked me to read it to him, which I did.

Q. At this time where was Mr. Erwin, the United States Marshal?

A. He was on the trail—(interrupted).

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled and defendant excepts. Exception allowed.)

A. He was on the trail somewhere.

Q. How long had he been gone from the office?

A. Since in the fall.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. MARQUAM.)

Q. You say Mr. Erwin was on the trail at that time? A. I think he was. Yes, sir.

Q. How long have you been in the office and in his employ as deputy marshal, in the employ of the United States Government by his direction?

A. Since last July. [466]

Q. What had been your experience as a police officer or a deputy marshal, or a detective prior to that time?

(Testimony of Frank B. Hall.)

A. I am not a detective or a police officer. I am simply an office deputy marshal.

A. I just asked you what had been your previous experience along these lines, prior to the time you went into the office.

A. I have had no experience as a detective or a policeman.

Q. You don't claim to be a detective?

A. No, indeed.

Q. Or a police officer? A. No.

Q. You are an executive officer of the United States District Court?

A. In the marshal's office. Yes, sir.

Q. Well, although Mr. Erwin was on the trail coming in when all this happened, did you know his attitude and feeling against this defendant?

A. No, sir. I did not.

Q. You never heard anybody say anything about it? A. No, I didn't. No, sir.

Q. Did you ever know of Mr. Erwin and Mr. Miller going over to the members of the Alaska Railroad Commission or their employees and trying to get Mr. Wooldridge fired? A. No, sir.

Q. You never heard of that?

A. No, sir. I never did.

Q. Did you ever hear of some affidavit against Marshal Erwin upon which affidavit Mr. Wooldridge had placed his seal as a notary public like you did on this paper? [467]

(Plaintiff objects as not cross-examination. Ob-

(Testimony of Frank B. Hall.)

jection sustained. Defendant excepts. Exception allowed.)

Mr. MARQUAM.—We wish to show—(interrupted).

Mr. ROTH.—We object to him making an offer of that kind.

Mr. MARQUAM.—I am not making an offer. The occasion of it, is asking Mr. Hall where Mr. Erwin was at that time on the trail—(interrupted).

The COURT.—If you desire to make an offer you can come to the desk with the Government's attorney.

Mr. MARQUAM.—If I can't make it that way I will have to withdraw it, but I except to the ruling of the Court.

The COURT.—The Court has not ruled.

Mr. MARQUAM.—The Court has indicated, whether it has directly ruled or not, that I can't ask that question.

The COURT.—No. You are away ahead of your story. You have presented what the Court believes to be an offer of proof, or an offer to prove, and the Court has asked you to come to the desk and make that offer in the usual way, and now you say you don't care to do that.

Mr. MARQUAM.—I take it that that is not the *usual* to make an offer of testimony. If the Court can see that it is for an impeachment purpose, I have a right to make that offer in the presence of the jury and not secretly.

The COURT.—The Court does not see that it is for that purpose, and the Court desires to have you

(Testimony of Frank B. Hall.)

come to the desk. If you desire to make that offer, as you did a few minutes ago.

Mr. MARQUAM.—Very well.

(Thereupon Mr. Marquam, Mr. Roth and the stenographer go to the desk of the Judge and there, not within hearing of the jury, Mr. Marquam makes the following offer.)

Mr. MARQUAM.—We expect to prove on the cross-examination of the [468] witness, F. B. Hall, now upon the stand under cross-examination, that he was cognizant and had knowledge for a long time past of the bitter feeling and hatred entertained by Mr. L. T. Erwin against the defendant Woolldridge; that this witness was in sympathy with the attitude of the said L. T. Erwin against the defendant; and the purpose for which this question is asked is to elicit upon cross-examination the bias and prejudice of this witness against the defendant.

The COURT.—The offer will be denied and an exception allowed.

(Said attorneys and stenographer returned to their seats and the trial is resumed in the hearing of the jury.)

Mr. MARQUAM.—Q. When were you first talked to, or did anybody talk to you, about going up the street here and hiding some place and watching what was going on? A. On February fifteenth.

Q. Had you any knowledge or information prior to that time of any trap being set or going to be set for this man Woolldridge?

A. No trap that I know of. No, sir.

(Testimony of Frank B. Hall.)

Q. You would not call it a trap. A. No, sir.

Q. Well, did you have any knowledge or information prior to that time that any scheme was to be laid by which he was to be involved in incriminating circumstances—if that suits you better as a description?

A. Well, I know that on February fifteenth I heard it talked in the office that Mr. Wooldridge was supposed to have made [469] a date, the evening following—or the evening previous, on the fourteenth, to meet—up at the Herrington residence, to meet Laura Herrington at that place.

Q. At what place? At the Herrington residence?

A. At the Herrington residence, yes.

Q. He had made an appointment to meet her at the Herrington residence? A. Yes.

Q. Who told you that?

A. I heard it talked about generally in the office among the boys. At that time I wasn't told anything more about that.

Q. That was on the fifteenth?

A. Yes. On the fifteenth.

Q. What time of day?

A. I think it was in the morning.

Q. That was the first you had heard of it?

A. Yes.

Q. That is the first you had been let into the understanding among the deputies as to what was going to happen? A. Yes.

Q. Were you up to Herrington's house the night before you went up to Rose's repair-shop?

(Testimony of Frank B. Hall.)

A. No, sir.

Q. You didn't get in on that?

A. I wasn't asked to go up there.

Q. What instructions did you have from anyone, Mr. Miller or anybody else, about what you were to do when you got up here around the corner of Second and Lacey Streets?

A. Mr. Miller told me to make arrangements in order to get some [470] place where we could hide ourselves and watch Rose's repair-shop, and see whether Mr. Wooldridge went in there, and whether Laura Herrington went in there, and there was some talk about getting Mr. Dodge's office or asking him if we could stay in there, but we didn't.

Q. Did you ask Mr. Dodge?

A. No. We didn't.

Q. Who did you ask?

A. We asked Mr. Pratt.

Q. Did you ask Judge Pratt? A. Yes.

Q. You did?

A. When I came up the stairs I asked Harry Pratt in the district attorney's office if we could use his office up there.

Q. Whose office?

A. Harry Pratt and Mr. Pratt's office. If we could use it, because we had reason to believe there was to be a crime committed, and we wanted to be in a position to stop it and prevent it from ever taking place again between these people, but I didn't tell Harry Pratt who it was, or anything about it, or what place we were going to watch.

(Testimony of Frank B. Hall.)

Q. Did you tell the old gentleman anything about it? A. Certainly.

Q. About what it was and who it was?

A. Oh, no. But I asked Harry Pratt if we could use the office and he said, "Yes, but you had better ask my father."

Q. Did you see him? A. Yes.

Q. Before you went up there? [471] A. Yes.

Q. Where?

A. Right in the district attorney's office. Harry came along and called him and he came in there and I explained the matter to him and he said, "Why, certainly. You evidently know what you are doing, and it is all right with me," and I said, "I have got the key from Harry," and he said, "That is all right."

Q. Judge Pratt said that? In the district attorney's office? A. Yes. He did, yes, sir, to me.

Q. Well, didn't he immediately after this thing had transpired come down to the marshal's office and jump on you roughshod for going into his office, and say to you in that connection that he thought it was—that you had gone pretty far, that he didn't maintain that office for a lot of "Peeping Toms" as he expressed it?

A. He said this—(interrupted).

Q. Didn't he say something about that?

A. Yes, he did about five days ago, but never previous to that time. Previous to this time he jumped on my back he came around to the office and tried to find out who it was.

(Testimony of Frank B. Hall.)

Q. Find out what?

A. Tried to find out what the trouble was about and who it was, and I wouldn't give him any information, and he laughed one day about the spectacle of Mr. Rose sitting on the grand jury—sitting on the steps, and he said, "I guess he is in trouble," and he laughed about it, and about five days later he got after me pretty hard. I didn't say anything to him. I simply let him go on and I told him, "You told us [472] we could go up there." "Yes," he said, "if it was to stop a burglary or something like that it would be all right, but not for this."

Q. Not for this kind of a layout? A. Yes.

Q. That is what he said?

A. Yes. And I told him I didn't care to discuss it any more; that the matter was dropped as far as I was concerned; that he had given his consent and I was sorry if I had bothered him and we wouldn't bother him any more. He said the matter wouldn't drop as far as he was concerned.

Q. He said if it had been a burglary or a murder, or something of that kind he would have been perfectly willing for you to use his office? A. Yes.

Q. But for this kind of stuff he didn't want it used for that?

A. He didn't want us to use it for that. I think he wanted to make sure that people wouldn't think that he had given me the key, I guess.

Q. Just tell this jury what Mr. Rose's condition was with regard to being calm, cool, collected, or nervous, excited and worried when he came down to the

(Testimony of Frank B. Hall.)

marshal's office and you talked with him down there.

A. Well, I don't think that he was what you might call very calm. He was slightly perturbed.

Q. Very red?

A. No. I think he was a little white.

Q. A little abnormally white was he?

A. I don't know him very well. He didn't act a great deal out of the ordinary. [473]

Q. What was your condition with regard to being calm, cool and collected.

A. That night you mean?

Q. Yes. No. I mean down here in the marshal's office, not when you were in Judge Pratt's office, peeking out. A. I was all right.

Q. Cool? A. I seemed to be. Yes.

Q. You were there when this statement was written? A. Yes, sir.

Q. How long did it take to prepare that statement?

A. I guess probably, maybe, fifteen or twenty or twenty-five minutes, something like that I don't know just how long.

Q. Fifteen, twenty or twenty-five minutes?

A. Yes, something like that.

Q. And everything that Mr. Rose said was taken down, was it? A. Yes, It was.

Q. Everything that he said? A. I think so, yes.

Q. Not just certain portions of it picked out and put down? A. No, sir.

Q. Was there anybody else at any time in there doing any talking except Mr. Rose? A. Mr. Miller.

(Testimony of Frank B. Hall.)

Q. That would be in the way of asking him questions, wouldn't it? A. Yes. And Mr. Berg.

Q. And whenever they would ask him a question, he would answer it? A. Yes, sir.

Q. And they were not interrupted in any way, nothing else [474] transpired or intervened so as to stop those proceedings? A. No, sir.

Q. They kept on from the time they started until they finished, and in that fifteen, twenty or twenty-five minutes of this conversation they got these two pages? A. Yes.

Q. And everything that occurred or was said was written down there.

A. I think the substance of what he said, and it was read over to him carefully.

Q. Now, you then read it? A. Yes, I read it.

Q. Have you ever read it since?

A. Not until it was just handed to me just now.

Q. Did you just now read it? A. Yes, sir.

Q. Tell this jury what is in this paper.

(Plaintiff objects as irrelevant, incompetent and immaterial and not cross-examination. Objection sustained. Defendant asks and is given an exception.)

Q. Can you tell this jury what is in this paper right now?

(Plaintiff objects on all the grounds last stated. Objection sustained and defendant excepts.)

Q. Tell this jury what Mr. Rose said at that particular time.

(Plaintiff objects as irrelevant, incompetent and

(Testimony of Frank B. Hall.)

immaterial, because the paper here is the best evidence of what Mr. Rose stated at that time.)

Mr. MARQUAM.—We submit it is not the best evidence.

The COURT.—Do I understand you to ask the question for the purpose of testing the witness' credibility?

Mr. MARQUAM.—I am asking the question not for the purpose of testing his credibility, but to test his recollection. It [475] would go to his credibility, of course, but now I am cross-examining him on the direct testimony.

A. You want me to tell you the substance of what Mr. Rose said?

Q. No. I don't want the substance, but the language he used.

The COURT.—Q. Can you give the exact language Mr. Rose used in the office that evening?

A. Not all of it.

Mr. MARQUAM.—Q. Can you give any of it?

A. No, sir. I don't think I could. Not positively, no. I can tell you about what he said.

Q. All right. Now just go ahead and tell exactly what he said as near as you can.

A. I can tell you about what he said.

Q. All right. Let's have it.

A. I am not saying this is exactly the words he used.

Q. No.

A. He said that Mr. Wooldridge came into his place about ten or twelve minutes to eight, or some-

(Testimony of Frank B. Hall.)

thing like that, and Mr. Wooldridge said, "You have too much light on here," and he turned out the light. And then Mr. Wooldridge went back into the back room and lay down on the bed. And then Mr. Rose said that Wooldridge said that he was going to get a piece from Laura or words to that effect.

Q. You would surely remember the words right at that point. Use the words he used.

A. "Going to get a piece from Laura"; "or used words to lead me to believe he wanted to have sexual intercourse with her." [476]

Q. All right. Go ahead.

A. And Mr. Rose said, "I wouldn't do that if I were you. I would wait until the grand jury is over, because if you don't they might suspect something and they would take the girl up into Roth's office, and they will turn her over to the assistants and then they will take her down into the grand jury-room, and they will sweat her until she tells the truth, tells it all."

Q. Go ahead.

A. That is all I can recollect just right now.

Q. Think a while. I want it all.

A. I don't recall it right at this minute.

Q. That is all you remember?

A. All at this time.

Q. After awhile you can remember more?

A. Yes. I might.

Q. If you saw this paper here you could remember some more? A. Yes. I might.

Q. If you talked with Roth you might remember

(Testimony of Frank B. Hall.)

some more of it couldn't you?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained.)

Q. That is all you can remember now, but if you were given a few minutes, two or three minutes, you think you could remember some more?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained. Defendant excepts and exception allowed.)

Q. You are quite clear that Erwin was on the trail when all this came off? A. Yes, I think he was.

[477]

Q. How long after you saw Laura Herrington go into this store was it that you and Mr. McMullen left the office of Mr. Pratt?

A. Oh, possibly a minute or two minutes after that.

Q. Where did she come from?

A. She came down Second Street and turned the corner of the bath-house and went down Lacey Street.

Q. How did you know it was her?

A. Because I recognized her.

Q. Weren't you expecting her? A. Yes.

Q. *Would have* recognized her had you not been expecting her— A. I think I would.

Q. —that far off at night?

A. Yes, there is a light there.

Q. Where? A. On the corner.

Q. On the corner? On the bath-house corner?

A. On the bath-house corner, I think. I know it was light on the corner.

(Testimony of Frank B. Hall.)

Q. Which corner did she turn around?

A. The bath-house corner.

Q. And the light is on that corner?

A. I think it was. Anyway it was light enough.
It was light.

Q. How was she dressed?

A. She had a dress on, and a coat.

Q. Under the coat you could see it? A. No.

Q. You presumed it was under the coat?

A. Yes, sir. [478]

Q. What kind of a coat did she have on?

A. I don't know.

Q. Could you recognize it, I mean in the light?

A. No.

Q. Do you know what kind of a hat she had on?

A. I didn't notice that.

Q. How did you recognize her? A. By her size.

Q. A cute little figure? A. Yes.

Q. Did you see her face?

A. No, I don't think I did.

Q. But you knew it was her? A. Yes.

Q. And would have known it was her if she had been going the other way? A. Yes.

Q. Or no matter where else she had been? Or on what other occasion, you could recognize it was her?

A. Yes, I—(interrupted).

Q. Did Wooldridge tell you she was coming up there? A. No, sir.

Q. Didn't he tell you that she was coming from the home of George Herrington and going in there at eight o'clock?

(Testimony of Frank B. Hall.)

A. I knew she was going in there at eight o'clock, but I didn't know where she was going from.

Q. Did you see anybody else pass there about that time? A. Yes.

Q. Who? [479] A. Some woman.

Q. Who was the woman? A. I don't know.

Q. You could see her? A. Yes.

Q. What did she look like? Who was she?

A. I don't know.

Q. Was she an elderly woman, or a young woman?

A. I don't know.

Q. Could see her? A. Yes.

Q. You could see her just as plain as you could Laura Herrington?

A. Yes. But I didn't know this woman.

Q. You were not interested in that lady or this woman? A. No.

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all.

Testimony of W. G. Cassels, for Plaintiff.

W. G. CASSELS, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. W. G. Cassels.

Q. What is your profession? A. Physician.

Q. Are you acquainted with Laura Herrington?

[480] A. I know who she is. Yes.

Q. Did you make an examination of Laura Herrington, recently? A. Yes, yesterday.

(Testimony of W. G. Cassels.)

Q. Did you make such an examination as you could tell whether or not her hymen had been ruptured?

A. There is no hymen there at the present time.

Q. You made an examination of her?

A. Yes, I did.

Q. What did you find with reference to the question of whether or not—just state what the result of your examination was, Dr. Cassels.

A. There is an absence of a hymen at the present time.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. MARQUAM.)

Q. I don't suppose it is possible for you to tell when that hymen was ruptured?

A. I wouldn't attempt it.

Q. Within certain limits—within what limit could you say of time that could have occurred? How recently or how anciently?

A. There are no marks of violence there, so it must have been that whatever injury was there has gotten perfectly well.

Q. The hymen could have been lacerated and ruptured three or four months ago? A. Possibly.

Q. And would bear the same appearance that it does now? A. Three or four months ago, yes.

Q. Would it take that long, do you think, Doctor, to have the [481] healing process go on so as to have the appearance that it has to-day?

A. That would depend on the violence used. It

(Testimony of W. G. Cassels.)

would be difficult to answer that absolutely.

Q. But you would say that it would be safe to say that it might have happened three or four months ago and still be in the condition it is now?

A. Yes, sir. If there had not been any great amount of injury, in three or four months the condition could be as it is to-day.

Q. Or it might have occurred a longer period than that? A. Yes.

Q. State to this jury, Doctor, what the condition was with regard to the sexual organs of this girl and the absence of a hymen, as compared with a woman known to have had continual sexual intercourse, frequent sexual intercourse?

A. Well, I can tell the jury that I didn't make an examination of the vagina,—that was not the object—to show that. The frequency of sexual intercourse is possibly more shown in the vaginal wall than it is in the external portion after the rupture of the hymen.

Q. Wouldn't this be true, Doctor, that a complete rupture of the hymen and the destruction of the hymen, as I understand you to say existed in this case, wouldn't be due necessarily or likely, to one act of sexual intercourse?

A. Yes. It could be due to one act of sexual intercourse.

Q. It could be, but that wouldn't be the probable result? A. Yes. It would be the probable result.

Q. And have it as badly destroyed as this was?
[482]

(Testimony of W. G. Cassels.)

A. As soon as it is destroyed that is the end of the hymen.

Q. It is true, is it not, that there can be cases of sexual intercourse without the destruction of the hymen? A. In certain forms of hymen, yes.

Q. You haven't any idea, of course, from the condition you found there, what form of hymen this was? A. No.

Q. And you couldn't tell whether it would have been possible for this girl to have sexual intercourse before her hymen was ruptured.

A. I couldn't say. I think it very unlikely in a small orifice like hers to have had any hymen without having it ruptured by sexual intercourse.

Q. Could you tell with any degree of certainty from the standpoint of a medical man, by an examination, a thorough examination of this girl whether she had been in the habit of having sexual intercourse with males?

(Plaintiff objects as not cross-examination. Objection sustained. Defendant excepts. Exception allowed.)

Q. I will ask you if you will make a further examination of this girl for the purpose of testifying before this jury, as an expert upon that main question, whether or not in your opinion as a physician she is a girl who has had sexual intercourse frequently with males.

(Plaintiff objects as irrelevant, incompetent and immaterial, and that it is not proper cross-examination.)

(Testimony of W. G. Cassels.)

The COURT.—The only proposition is this: If you are simply making this as a request for the doctor to make him your witness, you shouldn't make it here in the presence of the jury, and *and* the question as put by you should be stricken. If you want [483] to make such requests, you should make them outside and not in the presence of the jury.

Mr. MARQUAM.—We take this view. I would like to be heard on this.

The COURT.—As to whether or not this witness should answer the question you have now put to him?

Mr. MARQUAM.—Principally upon the admission of the question immediately before that.

The COURT.—That has been ruled upon.

Mr. MARQUAM.—Would the Court consider reversing his ruling upon that?

The COURT.—No.

Mr. MARQUAM.—And give me an opportunity to be heard.

The COURT.—No, I don't care to hear you.

Mr. MARQUAM.—We except. That is all.

The COURT.—You already have an exception to the ruling. I am only going to allow one exception to each ruling. I think that is sufficient.

(Trial continued until February 11, 1916, at 10 o'clock A. M., and the jury, after being admonished as usual by the Court, withdraw in charge of the bailiffs. [484])

March 11, 1916, 2 o'clock P. M., defendant and his attorneys and the District Attorney and the jury are

(Testimony of W. G. Cassels.)

present in court and trial resumed.

Mr. ROTH.—There are one or two small matters I overlooked when Mrs. Herrington was on the stand and I now ask permission of the Court to recall Mrs. Herrington for the purpose of asking these formal questions.

The COURT.—Permission will be granted you.

Testimony of Mrs. Exena Herrington, for Plaintiff.

Mrs. EXENA HERRINGTON, a witness for plaintiff heretofore sworn, testified as follows, to wit:

Direct Examination.

(Mr ROTH.)

Q. Mrs. Herrington, was Laura ever married?

A. Ever married?

Q. Yes. Did she ever marry anybody?

A. No.

Q. She is not the wife of Mr. Wooldridge?

A. No.

Q. Mrs. Herrington, when you were up at Morency's the time that Mr. Dodge talked to you, what did Mr. Dodge tell you when he came to you to talk to you? A. Well, he asked me questions.

Q. What did he say first?

A. He said that Mr. Wooldridge brought the potatoes.

Q. Never mind now. Not about that.

A. That is what he said first.

Q. Did he say anything about the Court?

A. Oh, he said he was sent by the Court.

Q. Sent by the Court? A. Yes. [485]

(Testimony of Mrs. Exena Herrington.)

Q. Mr. Dodge told you that? A. Yes.

Q. Now, I want to ask you another thing; where is this cache where he gave you this dollar and this bottle of whiskey; is it in the front of the house or the back part of the house, or where is it?

A. In the cache.

Q. Where is the cache.

A. Cache, in the back part.

Q. In the back part of the house? A. Yes.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. MARQUAM.)

Q. What did you say that Mr. Dodge told you, Mrs. Herrington, when he first came there?

A. He said he was sent by the Court.

Q. That is that he, that Mr. Dodge was sent by the Court? A. Yes.

Q. Are those just the words he used?

A. Yes. He said they ask me questions.

Q. And that he was sent by the Court? A. Yes.

Q. You are sure of that? A. Yes, I am sure.

Q. Didn't Mr. Dodge tell you at that time that he was representing Mr. Wooldridge? A. Yes.

Q. That is, that he was his lawyer and that he wanted to talk [486] with you and find out what the facts were in the case from you. Didn't he tell you that, or words to that effect? A. Yes.

Q. He told you that he was Mr. Wooldridge's lawyer? A. Yes, sir.

Q. Or representing him, did he? A. Yes.

Q. When was it that he told you that the Court

(Testimony of Mrs. Exena Herrington.)

sent him, then, if he was Mr. Wooldridge's lawyer?
Did he say that at the same time?

A. Yes. He told me that he was going to help him
• out.

Q. Going to have Mr. Wooldridge out?

A. Help him out.

Q. He was going to have Mr. Wooldridge help him,
or he was going to help Mr. Wooldridge?

A. He was going to help Mr. Wooldridge. That
is the way I understood.

Q. As his lawyer, you mean? A. Yes.

Q. How did he come to say, or when did he say,
that the Court had sent him?

A. I can't understand that.

Q. You mean you can't understand my question?

A. No, sir.

Q. I want to know if it was before he told you that
he was Mr. Wooldridge's lawyer or after he told you
that he was Mr. Wooldridge's lawyer that he said
to you the Court sent him.

A. Well, first he said that he was Mr. Wooldridge's
lawyer and if I ain't mistaken, then he said that he
is sent by the [487] Court.

Q. You say "if you are not mistaken"?

A. If I ain't mistaken he said the first that he was
Mr. Wooldridge's lawyer.

Q. He said that first? A. Yes.

Q. What did you understand by what you think
that he said; did you understand that the Judge of
this court had sent him up there to talk to you?

A. No, I don't think that at all.

(Testimony of Mrs. Exena Herrington.)

Q. What did you think from what you were told, Mrs. Herrington?

A. Well, I don't understand these things, you know.

Q. We are trying to find out just exactly what he said there. Explain it as best you can, Mrs. Herrington. What did you think, what impression—well impression she wouldn't understand—what did you think when Mr. Dodge told you that the Court had sent him there?

A. Well, I think—when he told me that, I think that the Court sent him.

Q. What do you mean by the Court?

A. I don't know what that means, "by the Court." I can't understand.

Q. You don't know what that means? You don't know what the word "Court" means? A. No.

Q. You didn't think from what he said to you that the Judge here had sent Mr. Dodge? A. No.

Q. You didn't think so? [488] A. No, not at all.

Q. Did you have any idea? What did you think?

A. No, I didn't have an idea at all.

Q. How do you remember, then, that he said that the Court sent him if you don't know what it was? How do you remember that "Court"?

A. Well, I remember what he told me. That is all I can tell.

Q. You remember the word "Court," do you?

A. He said the Court was sending him here. That is all I remember.

Q. That the Court sent him here? A. Yes.

(Testimony of Mrs. Exena Herrington.)

Q. And you didn't know, and don't know now, what the word "Court" means? A. No.

Q. Well, he told you that, told you that he was Wooldridge's lawyer; then he told you that he wanted to find out—wanted to talk with you and find out just what the facts in the case were, or what had happened? A. Yes.

Q. And he wanted you to tell him, if you would, everything that you knew about this Wooldridge matter, didn't he?

A. Yes. But I told him I didn't know anything only what Laura told me. That is all.

Q. You didn't know anything only what Laura told you? A. Yes, that is what I told him.

Q. Who did you first tell or talk to when you told that Mr. Dodge had said that the Court sent him? Who did you tell that to first?

A. I think I told him (indicating Mr. Roth). |[489]

Q. Mr. Roth? A. Yes.

Q. When? A. When I came up here.

Q. To-day? A. No.

Q. The first time?

A. The second time I think I came.

Q. Did you tell Mr. Roth at that time just in the words that you told on the stand, that Mr. Dodge said that the Court had sent him? A. Yes.

Q. You told him that the first time you talked to him? A. Yes.

Q. Did he explain to you what the word "Court" meant?

(Testimony of Mrs. Exena Herrington.)

(Mr. Roth objects as not cross-examination. Objection overruled.)

A. No.

Q. Did Mr. Roth at that time ask you if you knew what the word "Court" meant?

A. No, I don't think so.

Q. And you didn't ask him? A. No.

Q. And he didn't explain it?

A. No, I didn't ask him.

Q. Might this be the remark that you heard Mr. Dodge make: That Mr. Wooldridge's case was coming up in court, or something of that kind?

A. No, I don't think I did.

Q. You are sure that he told you that the Court had sent him?

A. Yes, I am certain that he told me that the Court sent him.

Mr. MARQUAM.—All right. That is all. [490]

Mr. ROTH.—That is all. The Government rests.

Mr. MARQUAM.—We desire to present some motions.

The COURT.—Very well, the jury may retire.

(The jury, *after admonished* by the Court as usual, withdraw from the courtroom in charge of the bailiffs.)

Mr. MARQUAM.—The defendant moves the Court to instruct the jury to return a verdict of not guilty upon the second count in the indictment herein, for the reason, first, that the allegations contained in the said second count of the indictment are not sufficient to constitute a crime; second, for the

(Testimony of Mrs. Exena Herrington.)

reason that there is not sufficient evidence produced upon the part of the prosecution to sustain the allegations of said second count, if the same do constitute a crime; third, for the reason that the evidence adduced upon the part of the prosecution is insufficient to warrant the jury in returning a verdict of guilty thereon, in that all the evidence adduced upon the part of the prosecution tends to prove, if it proves anything, some acts of preparation, no proof of an attempt of the commission of the crime or rape has been established by the evidence; that if this jury returned a verdict of guilty upon the second count in said indictment, the Court, under the law and under the evidence, would be required to set the same aside. (Argument.)

Is the Court going to rule on this motion before the jury comes in?

The COURT.—I intend to rule upon the motion after the jury comes in. [491]

Mr. MARQUAM.—(After the argument and after remarks by the Court.)—I am going to assume that the motion will be overruled. The defendant desires to request at this time that the prosecution elects as between the first and second count upon which count they rely for a conviction in this case. The record can show that this motion is made and presented without argument.

(After some discussion the jury are returned into Court and being called answered to their names.)

The COURT.—The record may show that the first motion interposed by the defendant is denied and an

(Testimony of Axel Running.)

exception allowed, and that the second motion is also denied and an exception allowed.

Testimony of Axel Running, for Defendant.

AXEL RUNNING, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Your name is Axel Running? A. Yes, sir.

Q. Where do you reside?

A. I live on Fourth Avenue, between Cushman and Lacey.

Q. You have resided here for a number of years, have you not? A. Yes, sir; eight years.

Q. Are you acquainted with the girl by the name of Catherine Herrington? A. Yes, sir.

Q. Did she ever work for you? A. Yes, sir.
[492]

Q. When?

A. She came to work for me about the seventh or eighth of February, 1915.

Q. How do you fix that date?

A. Well, my wife went to the hospital, I believe on the 28th of January, and she came home on the fifth of February, and she went to work a few days after that, the second or third day after that.

Q. Is that the only time she ever worked for you?

A. Yes, that is the only time.

Q. And how long did she work?

A. Something around three weeks.

Q. Something around three weeks, commencing on the fifth day of February?

(Testimony of Axel Running.)

A. Two or three days after that. My wife came home and it was two or three days before I got her.

Q. That is Catherine Herrington, the daughter or step-daughter of George Herrington. I believe she is a sister of Laura Herrington.

A. Well, I have heard so. I am not sure of that.

Q. Have you had occasion since being first spoken to about this to refresh your memory from any data, so that you are accurate about the date?

A. Yes, I looked it up and I found the bill from the St. Joseph's Hospital.

Q. That is the one you turned over to me?

A. Yes.

Mr. MARQUAM.—That is all.

Mr. ROTH.—No questions. [493]

Testimony of J. H. Miller, for Defendant.

J. H. MILLER, a witness for defendant, heretofore sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Mr. Miller, I want to ask you if any further attempts or preparation were made with regard to finding out what was going on in Rose's repair-shop after the occasion that you testified to the other day? That will be on the fifteenth, will it not?

A. Nothing further that I know of, Mr. Marquam.

Q. Was there any attempt made or efforts made on the succeeding evening, or any evening after that, to station deputies in this hall where they had previously been stationed, for the purpose of overhear-

(Testimony of J. H. Miller.)

ing any conversation that might possibly occur in there? A. No, sir.

Q. At no time subsequent to that?

A. Not at my direction or of my knowledge.

Q. You have no knowledge of it?

A. And I believe there was not by any of the other boys. I don't think it would have been done without my knowledge or consent.

Mr. MARQUAM.—At this time, while Mr. Miller is on the stand, I wish to make a statement with regard to a question I asked Mr. Miller the other day. I laid the foundation for impeachment upon the question of his having tried to influence, and successfully influencing Mrs. Kettleson, who runs the Little Grill, and I want to *the* say to the Court and in the presence of the jury that our information upon that subject was incorrect; that I understand the fact to [494] be that Mr. Wooldridge's daughter was not employed there at all, and I take this opportunity, and I am very glad of the opportunity to say that we were mistaken about it.

The COURT.—Very well. Any further examination?

Mr. MARQUAM.—Not with this witness.

Mr. ROTH.—No cross-examination.

Testimony of B. A. Dodge, for Defendant.

B. A. DODGE, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Mr. Dodge, you are one of the attorneys for the

(Testimony of B. A. Dodge.)

defendant in this case? A. Yes, sir.

Q. And you were acting as such attorney since about what time, Mr. Dodge?

A. I think since Saturday following the time of the arrest of Mr. Wooldridge.

Q. I will ask you if, acting as such attorney, you have ever sought and had a conversation relative to the facts in this case with Mrs. Herrington?

A. I have.

Q. Where did that occur and when?

A. It occurred on the twenty-first day of February, I think. I made arrangements for the meeting through Mr. Morency, to take place at his house in the evening. Mr. Morency is a brother-in-law of Mrs. Herrington. His wife and Herrington's [495] wife are sisters. I knew Morency and I thought I could make an arrangement of that kind. I did so.

Q. I will ask you if at that time you—let me ask you this. I withdraw that. Did you at that time state to Mrs. Herrington that you wanted to find out what the facts in the case were, as far as she knew them, as far as Wooldridge was connected with this matter, and as far as his having been at her house?

(Plaintiff objects that the proper foundation has not been laid for the introduction of the testimony, in that the parties present were not stated; that this question is incompetent, anyway, because it is not an impeaching question, and for that purpose it is hearsay. After argument, at request of counsel the reporter reads from the testimony given by Mrs. Xena

(Testimony of B. A. Dodge.)

Herrington as follows:

“Do you know Mr. Dodge. Know who he is?

A. I seen him once.

Q. Where? A. Up to Morency’s.

Q. He was there talking with you? A. Yes.

Q. Didn’t he ask you what had occurred there at the time that Wooldridge came there. He was talking to you about that, was he not?

A. Well, he asked me a few questions there.

Q. Yes? He asked you, did he not, if Wooldridge had given you any money, or a dollar, did he not?

A. I don’t remember if I did answer that or not.

Q. That is what you were there with him for; at least, that is what he was there for, to talk with you and find out what you knew about this case, isn’t that true? Mrs. Herrington, isn’t that true? [496]

A. I don’t know.

Q. Well, anyway, he was talking to you.

A. Yes, I was talking to him.

Q. And talking about this case? A. Yes.

Q. And did you not at that time tell Mr. Dodge that you asked Mr. Wooldridge to loan you a dollar, or to give you a dollar?

A. I didn’t ask him for a dollar.

Q. The question is, did you not tell Mr. Dodge at that time when he was finding out what you knew about this case that ‘I asked Mr. Wooldridge to let me have a dollar,’ or ‘to loan me a dollar’? A. No.

Q. Isn’t that what you told Mr. Dodge?

A. No, I didn’t.

Q. You deny that? A. No, I didn’t ask him.

(Testimony of B. A. Dodge.)

Q. Then you deny it. Well, had there been anything said between you and Laura or Mr. Wooldridge about any money, before he gave you this dollar?

A. No. I never know nothing about the dollar, then he give it to me to give to Laura. That is all I know.

Q. Without saying anything; just came and handed you a dollar? A. Yes. He said—

Q. What did he say?

A. He said, 'You give that to Laura.' "

(The matter is argued by counsel and Mr. Marquam states that in order to get the records straight he will ask another question.)

Q. I will ask you this question, Mr. Dodge, whether or not upon the occasion of your being at Mrs. Herrington's house (evidently means "Mrs. Morency's house") at the time fixed [497] in your answer to my interrogatory, you and she being present, she did not tell you at that time and place that she had asked or begged a dollar from Mr. Wooldridge when he was up there at her house on the morning of the fourteenth of February, 1916?

(Plaintiff objects for the reason that proper foundation has not been laid for the introduction of the testimony, in that, it does not appear what parties were present. Objection sustained. Defendant excepts. Exception allowed.)

Mr. MARQUAM.—That is all.

Mr. ROTH.—No questions.

Testimony of Ed Hall, for Defendant.

ED HALL, a witness for defendant, heretofore sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Mr. Hall, you are occupied as night watchman, are you not, around the town of Fairbanks?

A. Yes, sir, for some of the merchants, I am.

Q. And you are occupied in that capacity, and have been all winter, have you not?

A. All winter? Yes, sir.

Q. During the month of February? A. Yes.

Q. During the fifteenth and sixteenth of February? A. Yes.

Q. And the fourteenth?

A. Every night. [498]

Q. You have a certain route which you follow?

A. Yes. Different rounds.

Q. Just tell us what that route is.

A. Well, the fore part of the night, I go down here by Sargent and Pinska's warehouse, down to Golden's store, then I go up Front Street at times, up to Noble. That is the street where Moody's shop is on.

Q. Go up Front Street?

A. Yes. Sometimes I go up Front Street that way and at other times I go up probably Second and I sometimes go up Third, and then come around by those warehouses—Barney Simon's.

Q. Do you stop on your way up Front Street before you get up to Moody's?

(Testimony of Ed Hall.)

A. I stop at the Fairbanks corner and put in a fire.

Q. Where else do you stop on Front Street. Anywhere along that block?

A. Yes. I sometimes step into a saloon.

Q. No work to do? A. No.

Q. Do you go up to Smith's gun store?

A. Yes. I step over there to Smith's gun-store and try the door, and Vachon's.

Q. As part of your work?

A. Yes, sir. And Vachon's store there.

Q. Then when you go up Front Street, how far do you go, up to Noble?

A. Up to Noble. That is where I turn and go down then by the warehouses, the warehouses of Barney Simon. [499]

Q. Down toward the river?

A. No. I mean up the other way.

Q. You mean up?

A. That is from Front Street, yes.

Q. Then how do you come down town?

A. Sometimes I come down Third, other times Second.

Q. Do you ever come down First?

A. I seldom go down Front Street the same way again. I might sometimes, but very seldom.

Q. Then you go on down town?

A. Then I have to take in Lavery's warehouse on Fifth and Gordon's store, that is in the morning I build a fire there, but I go up and try the doors in the evening.

(Testimony of Ed Hall.)

Q. You say at different times—(interrupted).

A. Then on Second Street I have the Fair there that I go in. I have a key to that place; and the back of those buildings those stores, such as Barney Simon's store and other places, I go and look around there in case of fire. They pay me for looking after it, and I don't have any key to those places, you understand.

Q. What time do you go to work?

A. I go to work at seven o'clock.

Q. In the evening? A. Yes.

Q. When do you go off?

A. Seven o'clock in the morning. I hardly ever get off at seven, pretty near eight o'clock.

Q. How many times do you make your rounds?

A. I make my rounds, probably,—sometimes it will be every [500] two hours. It use to be every hour but I couldn't make it this winter that way; every two hours or two hours and a half. But I didn't go clear up to Noble Street that often.

Q. Do you go up there on the first trip?

A. I generally go up there along about nine or ten o'clock in the evening, and take a look at the door; then sometimes I go up there in the morning, but not every morning.

Q. Do you go to your house during the night?

A. I have been down to my own house a couple times after different stuff.

Q. A couple times every night?

A. No. A couple of different times, on certain nights, that is maybe one or two nights, but not more

(Testimony of Ed Hall.)

than two or three different times.

Q. You don't have any particular way of going from place to place on your rounds?

A. No. I have no particular way.

Q. Sometimes you go one way, and sometimes another? A. Yes.

Q. When you are up at the upper end of town, coming down Front Street, do you ever go up Lacey Street? A. How is that?

Q. After you get up around Moody's and Smith's and there— A. Yes.

Q. How often have you come from Front Street up to Second Street on Lacey Street.

A. Oh, I have come up that way quite a good many times. I couldn't tell about how many times. [501]

Q. Quite a good many times?

A. At different times.

Q. Quite a good many times throughout the winter? A. Throughout the winter, yes.

Q. Frequently?

A. No. I wouldn't say frequently, for I generally, lots of times, I come around the other way, but I go that way probably as often as I went up Second or Third Street.

Q. And in doing so, you passed by Rose's bicycle-shop.

A. Let's see that is on Lacey. Well, I don't pass that place as a rule, maybe once or twice a—(interrupted).

Q. I thought you went up Lacey Street to Second quite often.

(Testimony of Ed Hall.)

A. I got the streets mixed. I mean Noble Street, the street that the warehouse is on.

Q. You know where Lacey Street is?

A. That is Bill McPhee's corner?

Q. That is the street I asked you about.

A. Well, I misunderstood the street.

Q. You don't go there very often?

A. I don't go there very often.

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all.

(The Court continues the trial until eight o'clock P. M. to-day, and the jury withdraw in charge of the bailiffs after being admonished as usual by the Court; and at eight o'clock P. M. the defendant and his attorneys and the district attorney and the jury being present, the trial is resumed.) [502]

Testimony of George Berg, for Defendant.

GEORGE BERG, a witness for defendant, heretofore sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Mr. Berg, did you at any time in connection with your investigation of this case go to Mrs. Herrington's and make inquiry for a certain whiskey bottle that she had? A. Yes, sir.

Q. That she said that Wooldridge had given *here*.

A. Yes, sir.

Q. Have you that bottle? A. Yes.

Q. Where is it? A. It is down in the vault.

Q. I wish you would produce it.

(Testimony of Ed Hall.)

(Witness withdraws from courtroom, and returns with a flask which he delivers to Mr. Marquam.)

Q. Is this the bottle that Mrs. Herrington told you that Wooldridge gave her? A. Yes, sir.

Mr. MARQUAM.—We offer this in evidence.

Mr. ROTH.—No objection.

(Bottle admitted in evidence and marked Defendant's Exhibit "A.")

Mr. MARQUAM.—Q. In your investigation further in regard to this matter did you get any more than one bottle from Mrs. Herrington?

A. No, sir.

Q. In trying to trace this matter up and connect it, did you take this bottle and exhibit it to the bartender in the Washington Saloon? [503]

(Plaintiff objects as irrelevant, incompetent and hearsay. Objection overruled.)

A. Yes, sir.

Q. Did he identify it as the bottle that was purchased by Mr. Rose?

A. He did not. He didn't identify it at all. He said they had such bottles or that size.

Q. Did you subsequently take another bottle to Mr. Kennedy of the Washington Saloon and ask him if the other bottle was the one that he sold Mr. Rose?

A. No, sir.

Q. Never any more than once?

A. I was in there several times.

Q. With regard to the identification of a bottle?

A. That is all. Just the once.

Q. How many bottles all together did you take into

(Testimony of Ed Hall.)

Mr. Kennedy for the purpose of identification?

A. That bottle (indicating) is all.

Q. What? A. Just that one.

Q. Just this one? A. Yes.

Q. You are sure about that, Mr. Berg?

A. Yes, sir.

Q. Isn't it true that you, after Mr. Kennedy failed to identify this bottle as the bottle sold to Mr. Rose that you brought a different and another kind of a bottle there and asked him if that was the bottle that he sold to Mr. Rose?

A. No, sir. I didn't ask Mr. Kennedy to identify that bottle. I went there to see if they had such bottles. [504]

Q. Did you ask him if that was *they* bottle, the kind of a bottle he sold to Mr. Rose?

A. No, sir. I asked him if they had such empty bottles of that size, a two-ounce bottle, and he showed me three different size bottles, three different shapes that he had.

Q. You didn't ask him, you say, if that was the bottle that he sold to Mr. Rose?

A. I don't think so.

Q. If that is your positive testimony, that is all I want.

A. I didn't ask him if that was the bottle he sold to Mr. Rose.

Mr. MARQUAM.—All right. That is all.

Mr. ROTH.—No cross-examination.

**Testimony of Mrs. Exena Herrington, for
Defendant.**

Mrs. EXENA HERRINGTON, a witness for defendant, heretofore sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Mrs. Herrington, I wish you would describe to the jury the bottle that you say Mr. Wooldridge gave you that had whiskey in it.

(Plaintiff objects on the grounds that the same question was answered by the witness on cross-examination. Objection overruled.)

Q. Just describe so the jury will understand, that bottle that you got from Wooldridge.

A. I can't understand.

Q. (By the COURT.) Can you tell what kind of a bottle it was that you claim you got from Mr. Wooldridge?

A. I said it must have been a pint. One of them flask bottles, [505] about that long and that wide (indicating), white.

Q. A pint bottle?

A. A pint. That big bottle is a pint. I don't know what you call a pint.

Q. Did you testify on the stand the other day on cross-examination—she may not understand that—when you were here the other day, didn't you say it was a half-pint bottle?

(Plaintiff objects on the ground that that was not

(Testimony of Mrs. Exena Herrington.)

her testimony; that she said it was a pint bottle. Objection overruled.)

Q. Didn't you say the other day that it was a half-pint bottle? A. No. I said it was a pint.

Q. You said it was a pint bottle? A. Yes.

Q. Would you know that bottle again if you saw it? A. Yes.

Q. Is that the bottle (indicating).

Mr. ROTH.—We object to the question on the grounds that that is not the full exhibit.

The COURT.—Objection sustained.

WITNESS.—Yes, that is the one.

Mr. MARQUAM.—I don't want any Indian calico on that bottle.

The COURT.—You offered it in evidence, and it is your exhibit.

Mr. MARQUAM.—I am asking if this is the bottle.

The COURT.—If you desire to exhibit the bottle to the witness on the stand, exhibit it as it was introduced in evidence by you.

Mr. MARQUAM.—No. I have a right to exhibit it to her without it being designated by any other thing.

Mr. ROTH.—We object.

The COURT.—Objection sustained. Exception allowed. [506]

Mr. MARQUAM.—Does the Court say that I can't exhibit this bottle without that piece of calico?

The COURT.—Certainly not. That is a part of the exhibit.

(Testimony of Mrs. Exena Herrington.)

Mr. MARQUAM.—I don't think it is fair with this piece of Indian calico on there by which she can identify it as that bottle.

Q. Is that the bottle? A. Yes.

Q. How do you know it is? How do you recognize it? A. By that stuff.

Q. That is the only way you recognize it?

A. Yes.

Q. Did you put that there?

A. The marshal put it on there.

Q. If that calico wasn't on there you couldn't tell whether that was the bottle or not.

A. I can't. No.

Q. That the same size bottle?

A. Yes. The same size.

Q. That Wooldridge gave you? A. Yes.

Mr. MARQUAM.—Very well (returns exhibit "A" then to the clerk).

Q. When did you give that to the marshal?

A. I can't remember when I did.

Q. Give us your best judgment. When do you think you gave it to him? A. It must be a week.

Q. How many days after the fourteenth?

A. The fourteenth, I can't understand that.

Q. You testified that you got this bottle from Wooldridge about [507] a half hour after ten o'clock on the fourteenth of February, that is, half an hour after ten o'clock in the morning.

Mr. ROTH.—Now—(interrupted).

Mr. MARQUAM.—Q. How long after that did you give this bottle to the marshal?

(Testimony of Mrs. Exena Herrington.)

Mr. ROTH.—She didn't testify that she got it a half hour after ten o'clock on the fourteenth.

Mr. MARQUAM.—I am trying now to fix definitely, as near as I can, when she turned it over to the marshal.

The COURT.—Very well.

Mr. MARQUAM.—Q. When did you give this bottle to the marshal?

The COURT.—Do you remember when you gave this bottle to Mr. Berg?

A. It must be about three days after.

Mr. MARQUAM.—Q. About three days after. You remember that night that you went away so that these people could get upstairs; do you remember that time? A. Yes.

Q. How long after that was it that you gave it to the marshal? A. Just about three days, I think.

Q. Just about three days?

A. I don't remember.

Q. After you gave it to the marshal, did he come back and talk with you about the bottle again?

A. No.

Q. Did he come and get any other bottle from you?

A. No.

Q. He didn't. Are you sure?

A. I am sure. Only the one.

Q. Just the one. A. Yes. [508]

Q. That is the same bottle that Mr. Wooldridge gave you? A. Yes.

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all.

Testimony of Aaron Kennedy, for Defendant.

AARON KENNEDY, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. You may state your name.

A. Aaron Kennedy.

Q. What is your business, Mr. Kennedy?

A. At the present time I am tending bar.

Q. What were you doing upon the fourteenth day of February, 1916.

A. I was tending bar at the Washington Saloon.

Q. You were the regular bartender?

A. I am. Yes, sir.

Q. I will ask you if upon that day you sold any whiskey to Mr. Rose? A. I did.

Q. How much whiskey? A. A half pint.

Q. When did you sell it to him?

A. It is about four-fifteen, I think, something like that. I think about four-fifteen.

Q. Have you a record of your sales of liquor that you keep?

A. I have. Yes, sir. (Produces book.)

Q. Turn to the record of sales upon the fourteenth, to refresh your memory and be accurate about it, and state what hour the [509] liquor was sold, the amount and price.

A. On the fourteenth, at four-fifteen, to Mr. Rose, half a pint of rye and fifty cents was the price of it.

Q. What do you mean by four-fifteen?

(Testimony of Aaron Kennedy.)

A. In the afternoon.

Q. The saloon is not open at night-time?

A. Only until twelve o'clock.

Q. I will ask you to look at this bottle and state whether that is the bottle that you sold to Mr. Rose upon that day? (Showing witness Defendant's Exhibit "A.") A. No, sir.

Q. How can you tell?

A. Because that is bigger than the one I sold him. That is a dollar flask.

Q. You sold to Mr. Rose a fifty-cent flask, I understand you to say? A. Yes, sir.

Q. I will ask you if, subsequent to that time, Mr. Berg came to your place with a bottle for the purpose of having you identify it.

A. After that day, that is the day after?

Q. By "subsequent" I mean after that.

A. Yes.

Q. How long after that?

A. He came in the afternoon, after three o'clock in the afternoon, somewhere between three and five.

Q. Of what day? A. Of the fifteenth.

Q. That would be the next day? [510]

A. That would be the next day.

Q. What did he have with him when he came?

A. He had a bottle with him—a flask.

Q. What kind of a flask?

A. The first flask he had was a brown flask.

Q. What did he say to you at that time?

A. He asked me if that was the bottle I sold to Mr. Rose the day before.

(Testimony of Aaron Kennedy.)

Q. What did you tell him?

A. I told him "no sir."

Q. Then what happened?

A. He had another flask, similar to that, not quite as big, pretty near as big as that, and he asked if that was the one, and I told him, "no, sir."

Q. Did he have the two of them together?

A. He had one in each pocket.

Q. He showed you two? A. Yes.

Q. Neither one of which—(interrupted).

A. Was the one I sold him.

Q. Is that the bottle (indicating)?

A. Similar to that. I couldn't tell if that is the one, because there is a thousand alike.

Q. Just look at it and state whether or not one of the bottles he had was similar to that.

A. Similar?

Q. The same size and color?

A. The same size and color.

Q. What was the other bottle he had? [511]

A. It was a brown flask, a little heavier than that and a little shorter than that, but holds the same amount as that—a pint flask.

Q. Did he ask you with regard to each one of these bottles, whether they were the ones?

A. Yes, sir. And he asked me to show which kind I sold him, and I showed him which kind I sold him.

Q. Have you one of those with you? A. Yes.

Q. Did you bring it at my request?

A. Yes. (Produces bottle.)

(Testimony of Aaron Kennedy.)

Q. Is that the size bottle? A. Yes.

Q. The same kind of a bottle—(interrupted).

A. Yes.

Q. —that you sold to Mr. Rose? A. Yes, sir.

Mr. MARQUAM.—We offer this in evidence.

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection overruled. Bottle marked Defendant's Exhibit "B.")

Mr. MARQUAM.—You may cross-examine.

Cross-examination.

(By Mr. ROTH.)

Q. Let me see your record of the fourteenth, please.

A. Yes, sir. (Hands book to Mr. Roth.)

Mr. MARQUAM.—Pardon me a moment. One more question.

Q. These entries in this book are in your handwriting?

A. Part of them. What I sold is mine.

Q. This particular entry? A. Yes, sir. [512]

Q. What does your record show with regard to the sale of liquor to Mr. Rose in this vicinity of time, within two or three days, say.

A. Before that you mean?

Q. Yes.

A. I have not sold—I don't think I ever sold any to Mr. Rose since I worked down there, before or after, but I couldn't say positively.

Q. But no other liquor has been sold by you or the saloon as far as the records are concerned within a number of days before or after this day?

(Testimony of Aaron Kennedy.)

A. I never looked over the record, except to my recollection that I have not.

Mr. MARQUAM.—That is all.

Mr. ROTH.—Q. You say this is your handwriting? A. Yes, sir.

Q. When was the last time that anybody spoke to you about this sale to Mr. Rose?

A. Mr. Berg. I think that was the marshal's name, I ain't quite sure.

Q. Didn't someone talk to you since Mr. Berg talked to you about it?

A. Mr. Marquam did last night.

Q. Last night for the first time? A. Yes, sir.

Q. Isn't it a fact that the only reason why you know that that was a half pint is because of the entry that is made here? A. Yes. [513]

Q. You have no independent recollection of that sale, have you? A. I have, yes, sir.

Q. You have an independent recollection of the sale?

A. I remember because every time I sell a flask or a bottle of any kind I have to mark it down on account of the government inspector might come around.

Q. That was the only sale of bottled goods that was made that day, wasn't it?

A. I don't know if it was or not. I am not sure. It might possibly be. (Examines record book.) That is the only one I sold that day. Yes, sir.

Q. That was the only one that was sold in the place that day so far as the record shows?

(Testimony of Aaron Kennedy.)

A. So far as my record shows, that is the only one, as far as this book shows.

Q. Have you any other record?

A. No. This is the only record.

Q. As far as the record shows that is the only one that was sold that day?

A. Yes, sir. Mr. ——— was below me and above me (indicating on record book) Here is the dates, the eighth, ninth and tenth, you see. Three bottles of beer on the eighth, on the ninth, I sold two bottles of beer, on the tenth I sold a pint of whiskey, and on the eleventh and twelfth I didn't sell nothing. On the fourteenth I sold one bottle.

Q. That is your handwriting (indicating on book)?

A. This is mine, also this here. Here is my signature.

The COURT.—Can I see that book, please?
(Book handed to the [514] Court.)

Mr. ROTH.—Q. When did you make that entry?

A. At the same time as Mr. Rose bought it.

Q. And you swear positively that Mr. Berg, when he came there had two bottles neither of which was the bottle in question here; the bottle that was shown to you here?

A. The bottle that was shown, I couldn't swear that that is not the bottle because there is a thousand bottles like that.

Q. But one the same size as that?

A. He had one the same size as that.

Q. And the same quality? A. Yes.

(Testimony of Aaron Kennedy.)

Q. You sell flasks of whiskey, you sell the same kind of flasks as that?

A. Yes, sir, for one dollar.

Q. Don't you sell them for six-bits?

A. They are a size smaller, just the least little bit smaller.

Q. The one for six-bits is smaller than that?

A. It seems the least little bit smaller, yes, sir.

Q. And you say now that you have an independent recollection—(interrupted). A. I have.

Q. —that Mr. Berg brought in to you two flasks, and one was a brown flask? A. Yes, sir.

Q. You are sure of that?

A. I am sure of it, yes, sir.

Q. When was it that he brought that to you?

[515]

A. The day after I made this sale.

Q. You are sure it was the day after?

A. Well, I wouldn't positively say it was the day after this sale was made. He first came in and wanted to look at the book, and I showed him the book, and he said: "Why didn't you mark down what kind of liquor you sold him there"? That is the remark he made to me. I said: "Because the sale above it is marked, and I didn't stop to mark it down," which I should have done, I suppose, but I didn't. And he told me I should have marked it, what kind, and he showed me a book and he went off again.

The COURT.—What day was this?

A. Fourteenth of February.

(Testimony of Aaron Kennedy.)

Mr. MARQUAM.—Q. What do you mean was the 14th; the time that Berg came in there?

A. No. When I sold—when the sale was made.

Mr. ROTH.—Q. It was the next day, though, after you had sold this to Rose, that he came in there?

A. Well, now, I couldn't recollect if it was the next day or the day after, but it was close to that sale that was made.

Q. It was one or the other? A. Yes, sir.

Q. Either the next day or the day after?

A. Yes, sir.

Q. It was not any later than that?

A. Yes, sir. I don't think so.

Q. You are sure of that? A. Yes, sir.

Mr. ROTH.—That is all. [516]

Redirect Examination.

(By Mr. MARQUAM.)

Q. You have nothing to refresh your memory about the time that Mr. Berg came up there. That is just your best recollection?

(Plaintiff objects as not redirect examination. Objection overruled, but Mr. Marquam restates his question as follows:)

Q. The question was: With reference to your testimony as to the day that Mr. Berg came there with those bottles, whether you testified purely and simply from your recollection, or have you any data or memorandum you made?

A. I have no memoranda of that except that I am positive that it was either one—not any more than

(Testimony of Aaron Kennedy.)

two days after I sold that whiskey that he was down there.

Mr. MARQUAM.—That is all.

The COURT.—The Court will ask one or two questions.

Mr. MARQUAM.—Pardon me a moment if the Court will permit me to ask another question.

Q. Have you made an examination of the book so as to state positively whether within a few days, two or three days before that, or two or three days after that, you made any sales to Mr. Rose of whiskey, previous to that or subsequent?

A. No. I have not examined the book.

Q. Examine it now and determine what the record shows in that regard.

A. (After examining record book.) No, sir. None.

Mr. MARQUAM.—That is all.

By the COURT.—Q. Mr. Kennedy, does that book contain all your sales of bottled [517] goods? A. Yes, sir.

Q. Did you sell any bottled goods in December last year?

A. Yes. Well, now, I wasn't there all the way through December, but we did. But I understood that some of it had got—either one of the books got lost, or something, I don't know for sure, because I only started to work there about the 1st of November, and during that, first to that I was working there, I didn't keep no record myself, but the bartender working daytime he kept the record of it.

(Testimony of Aaron Kennedy.)

Q. So your record of sales in December is in some other book?

A. Well, now, I don't know where it is, Judge.

Q. Were you there in December?

A. I was working there in December.

Q. Did you sell any bottled goods in December?

A. Once in a great while. Yes.

Q. Where is your record of it?

A. I have not got no record of it.

Mr. MARQUAM.—I offer an objection to testimony in regard to sales of liquor at any other time, as not material in this case.

The COURT.—I very seldom get a chance to see these books.

Mr. MARQUAM.—It seems to me this is not the proper time to go into liquor license matters, and we except.

A. It happened this way: That during the month of January—I don't know Marshal Berg any more than a person told me that was his name—at some period of time in the latter part of January, he came to look at this book during the time that I was working there—I didn't know if he was license inspector or liquor inspector—but he was in there, and when I came to work that time he showed me this book [518] and told me to keep the record from that on.

The COURT.—I understand you. Any further examination?

Mr. MARQUAM.—That is all.

Testimony of J. E. Clark, for Defendant.

J. E. CLARK, a witness for defendant after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Mr. Clark, you are the clerk of this court?

A. Yes, sir.

Q. Custodian of the records of this court?

A. Yes, sir.

Q. I will ask you to state whether or not you have amongst your records an indictment against J. P. Rose for the crime of rape.

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained.)

Mr. MARQUAM.—I want to state that we offer this evidence for the purpose of—(interrupted).

The COURT.—You may come to the desk with the stenographer and make your offer.

(Mr. Marquam now makes his offer at the desk of the Judge, in open court, but not in the hearing of the jury.)

Mr. MARQUAM.—The defense have called the witness J. E. Clark for the purpose of proving that there is in the records of the office of the clerk of this court a secret indictment against the witness for the prosecution J. P. Rose upon the charge of rape, upon which has been endorsed by the Judge of this court “Without Bail,” for the purpose of showing the relations existing between the defendant in [519] this case and the said J. P. Rose at

(Testimony of J. E. Clark.)

the time of the offense alleged in this indictment, for the purpose of affecting his credibility as a witness as affecting his interest in testifying as a witness regarding the matters and things concerning which he did testify to in his direct and cross-examination.

(The jury, after being admonished by the Court in the usual manner, withdraw from the courtroom in charge of bailiffs and the last question asked by defendant's attorney and the offer made by him as above set forth, are discussed by Court and counsel and thereafter the jury returned into court.)

The COURT.—Have you any further examination of the witness?

Mr. MARQUAM.—No.

Mr. ROTH.—No examination.

Mr. MARQUAM.—We will except to the ruling of the Court.

The COURT.—An exception may be allowed.

(The Court after admonishing the jury as usual continues the trial until Monday, March 13th, 1916, at ten o'clock A. M., and the jury withdraw in charge of the bailiffs; and at ten o'clock A. M., Monday, March 13th, 1916, the defendant and his attorneys and the district attorney and the jury are present in court and the trial is resumed.)

Testimony of Frank R. Clark, for Defendant.

FRANK R. CLARK, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. You are one of the members of Dunham & Clark of the Red Cross Drugstore? A. Yes, sir.

Q. I will ask you if you have a chart or record of the temperatures that have prevailed in the town of Fairbanks for the last several years. [520]

A. I have, sir.

Q. Does your chart and record show what the temperature was on the twenty-second and twenty-third of December, 1914. A. Yes, sir.

Q. I wish you would refer to it and state what the temperature was on those dates.

A. On the twenty-second and twenty-third?

Q. First upon the twenty-second, then upon the twenty-third. A. Of 1914?

Q. Of 1914.

A. (Examining paper.) On the twenty-second it was nineteen above and twelve above. Twelve was the minimum and nineteen was the maximum.

Q. On the twenty-third.

A. On the twenty-third it was maximum twelve above and minimum six below.

Q. When were those temperatures taken? What time of day?

A. Those were taken between the hours of twelve midnight and twelve midnight.

(Testimony of Frank R. Clark.)

Q. When would the minimum temperature be taken?

A. The minimum temperature would be taken—we usually take it—we set the thermometer at twelve at night. So the registering filament would show the lowest point reached during the previous twenty-four hours. At what moment of time that would be, I don't know, but the registering filament would show the highest and lowest point during the twenty-four hours.

Mr. MARQUAM.—You may cross-examine.

Mr. ROTH.—That is all. [521]

Testimony of Bion A. Dodge, for Defendant.

BION A. DODGE, a witness for defendant, heretofore sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. With regard to the occasion of your having been to the Morency house that you testified to the other day, I will ask you to state if at any time that you were there, in your conversation with Mrs. Herrington you told her that you had been sent by the Court, or words to that effect? A. I did not.

Mr. MARQUAM.—You may cross-examine.

Mr. ROTH.—No cross-examination.

Testimony of W. H. Wooldridge, for Defendant.

W. H. WOOLDRIDGE, the defendant, a witness in his own behalf, being sworn, testified as follows:

Direct Examination.

(By Mr. MARQUAM.)

Q. Your name is W. H. Wooldridge?

(Testimony of W. H. Wooldridge.)

A. Yes, sir.

Q. You are the defendant in this case?

A. Yes, sir.

Q. And reside in Fairbanks? A. Yes, sir.

Q. How long have you lived in Fairbanks?

A. Since the spring of nineteen and three.

Q. How old are you?

A. Fifty-three years old next August.

Q. You are a married man?

A. Yes, sir. [522]

Q. Family? A. Yes, sir.

Q. How many children? A. Three.

Q. What business are you engaged in or have you been engaged in, Mr. Wooldridge, since you have been in Fairbanks?

A. I have a plot of ground in the town of Fairbanks that I garden as a truck patch, and work for wages; I have mined some.

Q. You have mined some? A. Yes.

Q. Where have you last worked regularly for wages, for whom?

A. For the Road Commission, I mean the Engineering Commission.

Q. The Alaska Railroad Commission? A. Yes.

Q. During the past summer? A. Yes, sir.

Q. When did you quit working for them?

A. I do not know the date; it was sometime in October of 1915.

Q. Since that time what have you been doing?

A. I have not been doing much of anything; just my own work around home.

(Testimony of W. H. Wooldridge.)

Q. You haven't been engaged for wages since that time?

A. No, sir. Except odd jobs occasionally.

Q. Do you know Laura Herrington? A. I do.

Q. And the Herrington family? A. Yes, sir.

Q. How long have you known them?

A. Since the winter of 1903-4.

Q. That is the first year that you came here?

A. Yes, sir.

Q. How had you become acquainted with the family?

A. I was employed by the School Board to teach a term of [523] school during the winter of nineteen three and four and some of those children went to school to me.

Q. You mean some of the Herrington children?

A. Of the Herrington children; yes, sir.

Q. I presume that Laura wasn't going to school at that time? A. No, sir.

Q. Some of the older children? A. Yes, sir.

Q. And would you say that you have known the family since that time? A. Yes, sir.

Q. Known George Herrington, Mrs. Herrington and the children? A. Yes, sir.

Q. You have heard the testimony that has been given in this case at the trial by Laura Herrington and the other witnesses? A. Yes, sir.

Q. I will ask you to state whether or not on or about the twenty-third day of December, 1914, you saw or met Laura Herrington near the Glass Block as it was described or anywhere in the town of Fair-

(Testimony of W. H. Wooldridge.)

banks and asked her to take a walk with you, or had any experience of that kind? A. No, sir.

Q. Did you see her at all at that time.

A. I don't remember of it.

Q. I will ask you to state directly on or about that date you took Laura Herrington to a cabin in any part of the town of Fairbanks, or in the vicinity of your house and had sexual intercourse with her?

A. I did not. [524]

Q. Did any circumstances occur at all where you and Laura Herrington were involved, or were together? A. No, sir.

Q. Have you and Laura Herrington, or were you and Laura Herrington, at or about the time mentioned ever alone together in any place in the town of Fairbanks or otherwise?

A. I have never been alone with her at any time.

Q. You were residing in the town of Fairbanks, of course, during February, 1916, the present year?

A. Yes, sir.

Q. I will ask you if you had occasion to go to the home of George Herrington during the month of February? A. Yes, sir.

Q. When was that?

A. The fourteenth of February.

Q. What was the occasion of your going to the house? A. I had met him on the eleventh.

Q. Who do you mean by him?

A. George Herrington.

Q. Where had you met him?

A. On First Street.

(Testimony of W. H. Wooldridge.)

Q. Whereabouts on First Street?

A. Near the Odd Fellows Hall.

Q. Did you have a conversation with him at that time? A. Yes.

Q. State to the jury what your conversation was with George Herrington at that time.

A. I walked up behind him and I said, "Hello, George. How are things coming," and he said, "Tough, damn tough. I haven't seen as hard a winter since I've been in Alaska." [525]

Q. Go ahead. If there was any further conversation just state what it was.

A. I told him that I was hard up too, but that I had lots of potatoes, and that if he needed potatoes that he could get them from me, and he says, "I may need them," but he says, "I may need them, but I have not got the money to pay for them," and I said, "Don't let that stand in the way; if you need the potatoes, you may have them."

Q. What did he say to that?

A. By that time we were at the Odd Fellows Hall and I stopped. I went into the hall, and he went on down the street.

Q. That was on the eleventh of February?

A. Yes, sir.

Q. Did you see him after that, between that and the fourteenth of February? A. No, sir.

Q. All right. What occurred upon the fourteenth of February when you went to Herrington's house? State what you went there for and what occurred.

(Testimony of W. H. Wooldridge.)

A. I went there to see if he wanted the potatoes at that time.

Q. How was it that you came to go to the house to inquire about it?

A. On Monday morning I was sorting my potatoes.

Q. Monday morning was what date?

A. Monday morning the fourteenth I was sorting potatoes.

Q. Where do you keep your potatoes?

A. In the cellar at home. I put the small ones in boxes to themselves, and those that are fit for table use I put in sacks. I have the small ones to boil for my chickens, and the others we use, and sell what I can. There is not [526] much of a demand for them.

Q. Go ahead.

A. I thought if Mr. Herrington wanted any potatoes I wanted him to take them at that time to get them out of my way.

Q. What did you do when you went down to the house? State what time it was when you went down.

A. About ten o'clock. I think it was about ten o'clock.

Q. All right. What was done? Just state in plain language and as briefly as you can what occurred when you went down to the house.

A. When I rapped at the door Mrs. Herrington opened the door, and I said, "Good morning. I have come to see Mr. Herrington about some potatoes that I was talking to him about," and she said,

(Testimony of W. H. Wooldridge.)

“Come in.” I asked her if Mr. Herrington was at home. She didn’t answer that question. At that I heard someone upstairs walking, and I stepped in. Laura Herrington came downstairs, came into the room where we were, and when she came in there I said, “How do you do?” She spoke first and said, “How do you do?” I answered her and I said, “You have grown considerable since I saw you last.” “Yes.”

Q. Right there. How long had it been since you had seen Laura Herrington prior to this time?

A. Really, I couldn’t tell you, Mr. Marquam.

Q. About how long?

A. I have seen her around over town.

Q. I mean how long had it been since you had seen her or had occasion to talk to her?

A. Oh, it had been two or three years since I had ever said anything to her at all before that. [527]

Q. Do you remember when the last time prior to this was that you had seen her?

A. The last time that I saw her I believe was probably the twenty-first of June.

Q. Where?

A. Here in Fairbanks when the celebration of the Native Sons and Daughters of the Golden North was held.

Q. You think you saw her at that time?

A. I think probably I saw her, but I couldn’t say positively that I did at that time.

Q. If you did see her at that time was that the

(Testimony of W. H. Wooldridge.)

last time you had seen her prior to being down at the house?

A. If I saw her any more, I don't remember.

Q. How long had it been prior to this time that we are now talking about, the fourteenth of February, that you had been to the Herrington house, that you remember?

A. I think it must have been four or five years. Perhaps longer than that.

Q. Had you seen or did you see Laura Herrington while they lived at Ester Creek? A. Yes, sir.

Q. Do you remember when that was?

A. I think it was the nineteenth of April, 1915.

Q. What were you doing out at Ester?

A. I was going out to the Ohio Roadhouse accompanying some provisions for the Government.

Q. That was while you were in the employ of the railroad commission? A. Yes.

Q. You say you saw her then. [528]

A. Yes.

Q. And talked with her?

A. No, sir. I spoke to her, or she spoke to us as we passed by. I was standing at the N. C. barn in company with Mr. Charlie Slater when she passed.

Q. It was just passing the time of day?

A. She passed and nodded her head and said, "How do you do" as she passed, and we answered her. That was all.

Q. Go back to the Herrington house on the fourteenth day of February. You had made this remark to her that she had grown since you had seen her.

(Testimony of W. H. Wooldridge.)

Now just from there where you left off, go ahead and tell what occurred.

A. At that point Mrs. Herrington asked to be excused. She said, "Laura will entertain you."

Q. All right. What did she do?

A. She stepped into the kitchen part of the house, but she was not out of my sight.

Q. That is Mrs. Herrington? A. Yes.

Q. Did she go upstairs at that time?

A. No, sir.

Q. What occurred then after she stepped into the kitchen, as far as you and Laura were concerned, what was said and what was done?

A. I asked Laura then why she was not at school. She said she had not been feeling very well.

Q. All right. What else?

A. Mrs. Herrington appeared in the door, or came back to the door and says, "You have never been in this house before, have you?" I says, "No. This is the first time I was [529] ever here." "Come upstairs and see how we have things fixed."

Q. What did you do?

A. She started upstairs and I followed her to a height that I could see around over the room, and told her things looked fine up there, and I came back down the stairs and she followed me. We went back into the front room. Then I asked her where I could find Mr. Herrington, and she said, "I think you will find him at Peoples, or maybe at the Fairbanks Corner. He is up town somewhere," and I said, "All right. I want to see him about some pota-

(Testimony of W. H. Wooldridge.)

toes that we were talking about,” and I asked her then if they were out of potatoes. And she said they had enough for a day or two, she thought, and as I was leaving she said “If you don’t find him, come back this evening.”

Q. Mrs. Herrington said?

A. Mrs. Herrington said. And I asked her what time and she said, “Seven or eight o’clock. Oh, any time he will be here.”

Q. You say that was said as you were leaving?

A. Yes, sir.

Q. Was there anything occurred in the way of talk or conversation on your part, between you and Laura Herrington, or you and Mrs. Herrington that you haven’t already testified to? A. No, sir.

Q. Well, what did you do after this last conversation took place, as you were leaving the house, if anything?

A. I opened the door and walked out. Mrs. Herrington followed me and she closed the door behind me. [530]

Q. Which was this, the front or the back door?

A. The front door, yes, sir; and when she got out there she said, “Mr. Wooldridge, could you loan me a dollar,” and I said, “Mrs. Herrington, I am hard up, but if you really need it I could let you have a dollar.” “Well,” she said, “We haven’t anything to eat and I need it.” I says, “I can let you have it for a short time,” and I let her have the dollar.

Q. And she took it? A. Yes, sir.

Q. What else occurred?

(Testimony of W. H. Wooldridge.)

A. That was all. I went away.

Q. Did you at any time while you were in the house tell Mrs. Herrington that you had something for her? A. No, sir.

Q. Well, after you left on that occasion, when was the next time that you went back to the Herrington house?

A. I think it was somewhere about half-past eight that same evening.

Q. Did you go back to the Herrington house that morning within half an hour or thereabouts from the time you went there the first time? A. No, sir.

Q. You were not there at all? A. No, sir.

Q. You were there about half-past eight. What did you go there at that time for?

A. Because Mrs. Herrington told me that Mr. Herrington would be at home that evening, and I wanted to see when he would take those potatoes.
[531]

Q. What happened when you went there? Who was there?

A. Laura Herrington was there alone so far as I know.

Q. All right. What was said when you went to the door? Did you go to the front door at that time? A. Yes.

Q. All right.

A. Laura Herrington opened the door when I rapped on it. I asked her if her papa was home; that I wanted to see him about these potatoes. She says, "Come in. Papa is upstairs asleep."

(Testimony of W. H. Wooldridge.)

Q. Papa is upstairs asleep?

A. She might have said some other word besides papa. I don't just remember, but it was something to that effect.

Q. State what happened; what you did and what she did.

A. And I asked her to go up and wake him; that I would like to see him.

Q. What did she say?

A. She said, "Don't be in a hurry"; that mama would be home pretty soon. I says, "Where is your mama?" She said, "Up at Aunty's," and I says, "I wanted to see your papa."

Q. What did she do at that time, if anything?

A. She said, "Let me play you a piece on the phonograph," and she started the phonograph, played the piece probably half through, and I told her to stop that I was in a hurry, that I wanted to see her papa and get back.

Q. What did she say about that?

A. She turned it off, and at that moment two men came up, or I heard the sound of feet on the—coming, and they rapped on the door, and she opened the door and two men entered.

Q. Who were they? [532]

A. I didn't know at that time.

Q. You found out since?

A. I found out afterwards, yes.

Q. That they were who?

A. Mr. Miller and Mr. Berg.

Q. What occurred when they came in?

(Testimony of W. H. Wooldridge.)

A. The man that was in the lead asked the girl where her father was, and she said, "He is up town."

Q. Did she seem to recognize these men, or could you tell by her actions or talk?

A. I couldn't tell. I couldn't notice any change in her at all.

Q. She said that her papa was up town?

A. Yes, sir.

Q. All right. What else occurred?

A. And I think the next question was, "Then he is not at home?" and she said, "No," and they turned and went out.

Q. What did you do?

A. I got up and followed them. When she said that her father wasn't at home, I had no further business there, and I followed those men out.

Q. What did they do?

A. They went down the street, and I went up towards the Shaw House on Second Street. I didn't go very far up the street, and I was thinking about why she should make those answers. She answered me that her father was up stairs asleep, and she told those two men that he was up town, and it struck me very singular then and it aroused my curiosity, and I wanted to know who those two men were. [533] I went back to the door, and she opened it when I rapped, and I asked her who those two men were. She said, "I don't know, I guess it was two men from the creeks. They wanted to see papa."

Q. Did you go in the house? A. No, sir.

Q. Did anything else occur at that time?

(Testimony of W. H. Wooldridge.)

A. And I started away and she said, "You can bring those potatoes at any time."

Q. Bring them at any time?

A. Yes, and I says, "All right. I will bring them in the morning."

Q. Did you take them there in the morning?

A. Yes. I took them the next morning.

Q. What time?

A. Oh, about ten o'clock, I should judge.

Q. About ten o'clock?

A. That was Tuesday morning.

Q. Now, at the time you went there that evening, how long would you say that you were in the house all together?

A. Oh, a short time, six or seven minutes. It was not but a very short time.

Q. What were you wearing in the way of outer clothing? A. I had my fur coat on, outside coat.

Q. Did you remove the coat while you were in the house? A. No.

Q. Kept it on? A. Yes.

Q. What did you wear in the way of a hat or cap?
[534]

A. I was wearing my cap and I kept it in my hand.

Q. You had your cap in your hand all the time?

A. Yes, sir.

Q. Was there anything that had occurred at that time, Mr. Wooldridge, while you were in the house that has occurred in the way of conversation, or anything else that you have not now related, as far as you remember, to the jury? A. No, sir.

(Testimony of W. H. Wooldridge.)

Q. Was there anything said by Laura Herrington or by you with reference to your meeting her or she meeting you at any other place? A. No, sir.

Q. Was the place known as Rose's bicycle shop or Rose's shop mentioned between you while you were there? A. No, sir.

Q. Anything of that kind? A. No, sir.

Q. When you delivered the potatoes next morning, who was there?

A. Mr. Herrington and Mrs. Herrington were the only ones that I saw.

Q. Did anything occur then in the way of talk or conversation?

A. When I rapped on the door Mrs. Herrington opened the door and I told her that I had brought those potatoes down, and she turned and spoke to Mr. Herrington and told him that I was there with the potatoes. He said, "All right. Bring them in here." He was standing in the kitchen door, and I carried them in and set them down in the kitchen.

Q. Have you, during this winter, or the last month or two, or during this time, been selling potatoes elsewhere in town [535] and delivering potatoes?

A. Yes, sir.

Q. Where ever you could sell them?

A. Yes, sir.

Q. When was the next time that you saw Laura Herrington, Mr. Wooldridge, after you had seen her down at the house? A. At Mr. Rose's.

Q. How did you come to go to Mr. Rose's, and when do you remember to have seen her?

(Testimony of W. H. Wooldridge.)

A. It was on the same evening that I delivered the potatoes.

Q. The same evening? A. Yes.

Q. How did you happen to be at Rose's?

A. I just called there to visit with Mr. Rose.

Q. Is that a habit or custom of yours, or otherwise?

A. Yes, sir. I called there very frequently.

Q. Give the jury some idea of how often you were there.

A. Oh, I judge I was there three or four evenings each week, probably more.

Q. You just drop in as you go by?

A. Yes. I don't make a special trip there. I drop in there.

Q. Is there generally upon your route when you are going down town or coming home?

A. Yes, sir.

Q. In the evening? A. Yes, sir.

Q. Now, from the time that you went to Rose's bicycle shop that evening, just tell this jury in detail, as near as you remember, exactly what occurred in the way of statements, [536] conversations, acts upon your part or upon Mr. Rose's part, and upon the part of the Herrington girl when she came there.

A. When I went into Mr. Rose's place of business there was a light burning in his front room, also one in his back room. I says, "Mr. Rose, you are very extravagant with your electricity." He says, "Yes. I was too lazy to get up and turn that light off.

(Testimony of W. H. Wooldridge.)

Turn it off, will you?" I turned it off and walked into the back part where he was.

Q. All right. Where was he when you went in there? A. He was lying on his bed.

Q. Well, now, where is that bed in reference to his shop and his back room?

A. It is pretty hard to—(interrupted).

Q. You heard the description that somebody came on the stand, I think it was Mr. Rose himself, as to the arrangement of that shop and his sleeping place. I will ask you if that description that he gave was substantially correct?

A. As nearly as I remember, yes.

Q. There is a partition back in the back part of the store. A. Part way across the room.

Q. And his room where he was lying is back of that? A. Back of that partition, yes.

Q. That is where he was lying when you went in?

A. Yes, sir.

Q. What was he doing when you got into the back room?

A. He was reading. He had a paper in his hand when I went in.

Q. All right. After you turned the light off and went back in there what did you do?

A. I think the first thing I asked him, "How is business to-day." [537] He said, "About as usual."

Q. Were you standing?

A. Yes. I stood there for a few minutes and talked to him.

(Testimony of W. H. Wooldridge.)

Q. Tell if you can, in a general way, what you were talking about, or if you can remember, after you got in there.

A. Well, we talked about the picture shows, and I looked at his clock and I think it lacked a few minutes of eight and I says, "Is your time right"? and he said, "No. It is seven minutes fast."

Q. Did you have a watch with you? A. Yes.

Q. All right. Go ahead.

A. And there might have been something said about keys. I don't remember whether there was or not.

Q. What directed your attention to the question of keys, the fact that you heard testimony about it?

A. I just heard this testimony about it. That is what directed my attention, but I don't remember.

Q. Did you ask at that time if Mr. Rose had an extra key to the front door, or a key to the front door, or asked him for the key to the front door, or anything of that kind? A. No, sir.

Q. Go ahead.

A. He asked me, "what is the news?" and I told him that I didn't know anything particular, and then I related to him about my experience down at Mr. Herrington's about those two men coming in and the girl making these two answers, that it aroused my curiosity, and he mentioned about those girls, meaning the Herrington girls and some others that are [538] running around over town. He said, "They are going all over town," so he understood, around to men's cabins soliciting money.

(Testimony of W. H. Wooldridge.)

Q. What else did he say?

A. He said, "Somebody is going to get in trouble with those girls yet. If I wanted to have anything to do with them I wouldn't do it while this grand jury was in session, because, he says "they will take them to Roth's office, and then before the grand jury and sweat them out until everybody that has ever had anything to do with them would—it would be known."

Q. Well, go ahead.

A. Now I think it was just about that part of the conversation that the door opened.

Q. Which door was that?

A. The front door. And Mr. Rose says "Who is that coming." And I leaned in my chair. I couldn't see around the corner of the edge of the partition, and I stayed there, or leaned far enough away until she came in sight, and he says, "Why that's Laura," and he says, "Hello" and she answered him, and she walked around back of my chair and as she got around by the side of me she says, "Somebody is following me. I want to hide."

Q. Somebody is following me. I want to hide?

A. Yes, sir.

Q. What did you say?

A. I didn't say anything. I got right up out of my chair and started to walk into the front room.

Q. For what purpose?

A. If there was anybody following her, I wanted to see who it [539] was.

Q. Well, now, at that particular time how were

(Testimony of W. H. Wooldridge.)

the lights? Was the light in the front shop still out? A. Yes.

Q. And the light in the back room was still burning? A. Yes, sir.

Q. Now what did you do?

A. I walked right out into the front room and turned that light on. Mr. Rose followed me right out and he said, "What did she say to you"? I said, "She says somebody is following her and she wanted to hide," He said, "Tell her to turn that light off then," and I walked back to probably fifteen feet of where I could see her and told her that Mr. Rose said, "Turn that light off if you want to hide." She said, "I will walk further back here."

Q. She said what?

A. "I will walk further back" or "Stay further back."

Q. Was the light turned off?

A. No, sir. I turned to Mr. Rose then and I said "I will step out here and see who that is that is following her," and I stepped to the front door, and when I turned to go out he was pulling his coat on, and he followed me right out. He put that light out in the front room as he passed it and came out to the door.

Q. Was the back light put out?

A. I couldn't tell because I didn't look back. I looked towards the Wilson corner.

Q. What do you mean by the Wilson corner?

A. On Second street, the Wilson Bath House corner on Second [540] street and I saw two men

(Testimony of W. H. Wooldridge.)

standing on the sidewalk and one looking around the corner, of the building, and I looked down the other way and I saw two men down there, that is at Bill McPhee's.

Q. Where was Mr. Rose at that time?

A. By the time I had taken in the situation that far Mr. Rose stepped out and he saw the same or at least he said, "There is somebody following her all right" and I said, "Get her out of here. She will get us into trouble."

Q. You said? A. Yes, sir.

Q. Or Mr. Rose said?

A. No. I said that, and Mr. Rose says, "She has got to get out of here," and he started right back. I says, "I will go up and see who these people are," and I started right up to Second street, and I got to the Wilson Corner—

Q. Up second?

A. Up Lacey street towards Second street.

Q. Mr. Wooldridge, after you got up there, who did you find they were?

A. Mr. McMullen and Mr. Hall, and I didn't recognize—(interrupted).

Q. Frank Hall?

A. Frank Hall and I didn't recognize the other at the time.

Q. What was said or done at that time?

A. When I saw who it was I just kept on going across the street and Mr. McMullen says "Hold on, I want to see you a minute" and I says, "All right. What do you want?" He says, "Come and go back

(Testimony of W. H. Wooldridge.)

to Rose's machine shop," and I went back there.

Q. Where was Rose during this time? [541]

A. He was staying there I think. I didn't pay any attention to what had become of him.

Q. When you got back to the shop was he there?

A. Yes, sir.

Q. Who else was there, if any one?

A. There were two other men there. I don't remember who they were.

Q. Deputy marshals were they?

A. Yes. Really I don't know whether they were deputy marshals. There was one man I didn't recognize at all.

Q. Was that a short heavy-set fellow? A. Yes.

Q. Do you know a man by the name of Roseburg?

A. Well I don't know him at all.

Q. After you got in there what occurred?

A. Then one of them, I don't know whether it was Mr. Hall or Mr. McMullen, says, "We will go down to the marshal's office."

Q. Did you do down?

A. We went down there, yes.

Q. Who do you mean by we?

A. They took—they started with me and I asked, I think it was Mr. McMullen, I says, "If you are going to take me down to the marshal's office, I want Mr. Rose to come down and give an explanation of what occurred."

Q. What had he said to you about going down to the marshal's office. What did he want to go down to the marshal's office for?

(Testimony of W. H. Wooldridge.)

A. He said, "I want to see what these meetings are for," and I [542] said, "I want to know too."

Q. And you went down?

A. I went to the marshal's office.

Q. You said you wanted to know too? A. Yes.

Q. And you went down to the marshal's office?

A. Yes.

Q. Who was there when you got down there?

A. There was John Wood that is deputy marshal Wood, and I think Mr. Berg.

Q. The deputy marshal? A. Yes.

Q. Anybody else?

A. I don't remember of anyone else.

Q. Was Miller there?

A. We met Miller and he went down with us.

Q. When you got to the office I mean who was all there? A. These were the men.

Q. That is Berg and Miller—

A. And Mr. Hall,—

Q. Anybody else? Where was the girl at that time?

A. —and Mr. McMullen and Mr. Rose and the girl.

Q. Rose and the girl were there? A. Yes.

Q. What occurred after you got into the office?

A. And Mr. Miller says to Mr. Berg, "You stay here and see that they don't talk to each other. I will call Mr. Roth."

Q. Did Roth come there?

A. And in a few minutes Mr. Roth showed up at the front door. He and Miller stood there and

(Testimony of W. H. Wooldridge.)

talked a minute, and he went. [543] out, and Mr. Miller came back into the private room—I could see through the door, see them—and Mr. Miller says to two of his deputies, I think it was Berg and Mr. McMullen but I wouldn't be sure who those were, he said, "You men come in here. I want you to hear what there is to be said," and he asked that girl then, "What did you go to Mr. Rose's for," and she said, "To meet him," and she pointed to me.

Q. Pointed to you?

A. Yes, sir. And he said, "What for?" Well, he said he wanted to do something to her.

Q. He said? The girl was talking now?

A. Yes.

Q. She said you wanted to do something to her?

A. Yes.

Q. All right.

A. And Mr. Miller said, "What is it?" and she said, "He said he wanted to get a piece off me." I says, "Mr. Miller, there is nothing to that, I deny it." Mr. Miller says then, "What were you doing at the Herrington place last night?"

Q. At his house?

A. Yes. At the Herrington house.

Q. Yes. Go ahead.

A. And I told him I went there to see about some potatoes. He says, "Have you been back there since?" and I told him no. He says, "Do you mean to say that you didn't go there immediately after you left that evening?" and I said, "Yes. I went

(Testimony of W. H. Wooldridge.)

back to the door to see who was there—those two men.”

Q. Well, what other conversation occurred there in the marshal’s [544] office?

A. And he said, “I am going to give this a thorough investigation. That will be all for to-night.”

Q. Let me direct your attention to one point. Somebody, I think Mr. Miller, testified something about the girl saying something to you or about you, about lying. A. Yes, she did.

Q. What was there said on her part or upon your part at the time that remark was made?

A. When I says, “Mr. Berg”—or “Mr. Miller, there is nothing to that. I deny it,” she says, “He is lying.”

Q. Then you left and went home?

A. Yes, sir. No, I didn’t leave and go home. I left and went to Mr. Dodge’s office.

Q. You went up to Mr. Dodge’s office?

A. Yes, sir.

Q. When were you arrested, Mr. Wooldridge?

A. On Saturday, the nineteenth of February.

Q. And this conversation was upon the fifteenth?

A. Upon the fifteenth.

Q. This talk down in the marshal’s office?

A. Yes, sir.

Q. Were you at the marshal’s office between those times? A. No, sir.

Q. I will ask you, Mr. Wooldridge, if at any time that you were in Rose’s shop that evening that you said anything to anyone about—not to anyone, but

(Testimony of W. H. Wooldridge.)

to Mr. Rose about having an appointment or a date with Laura Herrington? A. I did not.

Q. Did you have any conversation or talk with Mr. Rose at that [545] time with reference to Laura Herrington further than to relate to him what had occurred down at the Herrington house?

A. That is all we said about her.

Q. I will ask you if upon the fourteenth day of February, 1916, or at any other time you gave Mrs. Herrington any whiskey? A. No, sir, I did not.

Q. I will ask you if upon the fourteenth day of February, 1916, you got any whiskey?

A. Yes, sir, I did.

Q. Just state the circumstances of that occurrence.

A. I had Mr. Rose to go and get me a bottle of whiskey.

Q. What do you mean by a bottle of whiskey?

A. A small flask.

Q. For what purpose? What did you want it for? A. I wanted it to break a cold.

Q. What did you do with the whiskey?

A. I put some quinine in it and took it for a cold.

Q. What did the whiskey cost? A. Fifty cents.

Q. What size bottle was it?

A. About a half-pint bottle.

Q. By a bottle you mean a flask.

A. A flask, yes, sir.

Q. I show to you two flasks here and ask you to state if they are either one similar to the kind you got from Mr. Rose.

A. Yes. Something like that small one there.

(Testimony of W. H. Wooldridge.)

Q. Nothing like that large one?

A. No, sir. [546]

Mr. MARQUAM.—The small one is marked Defendant's Exhibit "B." You may cross-examine. Just another question.

Q. Mr. Wooldridge, have you ever been convicted of any crime? A. No, sir.

Q. Ever arrested for any offense? A. No, sir.

Q. I mean arrested before upon any offense before the time you were arrested in this case.

A. No, sir.

Q. Do you remember, Mr. Wooldridge, when it was that you bought that whiskey, with regard to what part of the fourteenth, what part of the day?

A. It was in the afternoon.

Q. Sometime in the afternoon? A. Yes, sir.

Mr. MARQUAM.—You may cross-examine.

Cross-examination.

(By Mr. HEILIG.)

Q. What time did you say you went to the Herrington house about these potatoes first?

A. About ten o'clock on the fourteenth.

Q. On the fourteenth of February that was?

A. Yes, sir.

Q. About how long do you think you stayed there?

A. About fifteen or twenty minutes.

Q. Are you sure it was not more than fifteen or twenty minutes? A. I don't think so.

Q. Could it have been more than half an hour?

A. I don't think so. No, I don't think it was.

[547]

(Testimony of W. H. Wooldridge.)

Q. What was the first talking you did or the first thing that was said after you came to the door?

A. By me?

Q. By anybody.

A. Mrs. Herrington opened the door and said, "How do you do," and I answered her the same and said, "How do you do," and asked her if Mr. Herrington was at home, that I was making arrangements with him about some potatoes.

Q. You are sure that was in the morning now?

A. Yes, sir.

Q. About ten o'clock or around there?

A. Yes, sir.

Q. Was there anybody else there at that time?

A. Yes, sir.

Q. Who was there? A. Her daughter Laura.

Q. Did you see her then? A. Yes, sir.

Q. When Mrs. Herrington opened the door did you step in immediately?

A. No. I stepped back three or four steps when I rapped, so as not to be right in the person's face who opened the door, and when she opened the door she said, "Good morning," or "How do you do," and I asked her that question then regarding if Mr. Herrington was home and that I was making arrangements to let him have some potatoes.

Q. Then she asked you to come in, I believe you stated. A. Yes, sir.

Q. And you went in? [548] A. Yes, sir.

Q. And was Laura Herrington there?

...

(Testimony of W. H. Wooldridge.)

A. Yes, sir. No, sir, I didn't see her when I went in.

Q. I asked you who was in there at that time when you went in and you said Laura Herrington was there. A. She was upstairs.

Q. How did you know she was upstairs at that time?

A. I heard her, I heard somebody upstairs, and she came down.

Q. You want us to understand now that she was not in there when you first entered?

A. She was not in that room.

Q. When you got in there, you didn't know she was there at all.

A. Yes, sir. I heard her footsteps.

Q. Could you tell her footsteps when you heard them? A. I heard someone walking.

Q. When you first entered did you know Laura Herrington was there at all? A. No.

Q. You are positive you didn't know she was there? A. I didn't know she was there.

Q. But you heard some footsteps upstairs?

A. Yes, sir.

Q. When did she come down—(interrupted).

A. Immediately.

Q. —relative to the time you entered.

A. Immediately.

Q. Did her mother call her?

A. No, she didn't call her.

Q. She just, as far as you know, voluntarily came downstairs. [549] What was the first thing

(Testimony of W. H. Wooldridge.)

Laura said after she came downstairs, if anything?

A. I don't remember whether it was "Good morning" or "How do you do."

Q. She spoke to you before you spoke to her?

A. Yes, sir.

Q. And what did you first say, the first words now that you said to Laura?

A. I said, "How do you do. You are growing" or "You have grown since I have seen you." I don't remember just the words that I said.

Q. How long would you say and state positively the last time that you remember of speaking to Laura before that time?

A. It might have been a year or so since I remember that I spoke to her on Ester Creek on the nineteenth of April as she was passing along on the sidewalk and I was standing there with Mr. Slater.

Q. That was merely speaking to her?

A. Just spoke as she passed. She nodded her head to us and spoke and we answered her.

Q. That was April, 1915. That would be a year ago? A. Yes, sir.

Q. Prior to that time when was the last time, about when, that you had talked to her?

A. Really I couldn't tell you, but it must have been a year or so before that.

Q. Had you been in the habit of being with her, that is, talking to her frequently?

A. No, sir. [550]

Q. Never at any time? A. No, sir.

Q. Never had been seen with her to any extent

(Testimony of W. H. Wooldridge.)

that you know of?

A. I don't think I have been seen with her at all, for I have not been with her.

Q. Now, if you got to the house about ten o'clock we will say, after you got to the Herrington house about ten o'clock, what time did you leave?

A. I didn't notice the time at all, but I was only there a short time, fifteen or twenty minutes.

Q. Assuming then that you got there at ten o'clock you would have gotten away by half-past?

A. Yes.

Q. In a space of time of a half an hour?

A. Yes.

Q. When was the next time that you came to the Herrington house that day?

A. About half-past eight that evening.

Q. You are sure that half-past eight is the first time you came to the house after this time in the morning?

A. Yes, sir.

Q. You are positive about that?

A. Yes, sir.

Q. What was the first thing you did when you got to the house about half-past eight?

A. Rapped on the door.

Q. Who came to the door?

A. Laura Herrington.

Q. Was there anybody else there that you could see then?

A. No, sir. [551]

Q. Did you go in the house?

A. Yes, sir.

Q. Did she ask you to come in?

A. Yes, sir.

Q. What did you do when you entered the house?

A. I sat down.

(Testimony of W. H. Wooldridge.)

Q. Did you keep your coat on? A. Yes, sir.

Q. What did you do with you hat?

A. I kept it in my hand.

Q. What kind of a hat were you wearing that night? A. I was wearing my cap.

Q. Your fur cap? A. Yes, sir.

Q. You kept that in your hand. Now, what was said between you and Laura at that time after she asked you to come in and you went in and sat down?

A. As I went in, before I sat down, I told her I wanted to see her papa about those potatoes, was he home. She said yes he was upstairs—upstairs asleep.

Q. She said asleep, did she? A. Yes.

Q. Had you looked for Mr. Herrington at all before that, Mr. Wooldridge, that day or that evening to see him?

A. I was up and down the streets several times but I didn't go in the saloons and look for him where they had indicated.

Q. Who had indicated?

A. Mrs. Herrington told me that I would perhaps find him at Petree's or the Fairbanks Corner.
[552]

Q. But you didn't go there and look.

A. I didn't go in there and look for him as I thought maybe I would see him around during the day, but I didn't. When I went home I kept that appointment then in the evening.

Q. Had you made an appointment for the evening?

(Testimony of W. H. Wooldridge.)

A. Mrs. Herrington told me if I would call there at seven or eight o'clock, or any time in the evening that I would find Mr. Herrington at home.

Q. Had she told you that you would find him at Petree's or the Fairbanks Corner in the daytime if you would look?

A. She said I may find him there.

Q. But that he would be home in the evening?

A. Yes, sir.

Q. She told you that her father was upstairs asleep, I believe you said.

A. Yes, sir.

Q. What happened after that downstairs in the house, what was said and done?

A. She turned the phonograph on and played a record.

Q. Do you know what the record was?

A. I don't remember.

Q. Did she play more than one record?

A. No. She played one perhaps about half through, and I asked her to turn it off, that I wanted to see her father.

Q. You didn't even hear the record through?

A. No. I asked her to go upstairs—(interrupted).

Q. Did you hear any footsteps at the door before that record was played through?

A. No. [553]

Q. Or I mean before it stopped?

A. No.

Q. When did you first hear the footsteps at the door or near the door?

A. She turned that record off and I says, "Go up and tell your papa I want to see him," and at that I

(Testimony of W. H. Wooldridge.)

heard those footsteps at the door.

Q. Was that all within the space of a few seconds?

A. Yes. Well, a minute or so.

Q. Had she started upstairs? A. No, sir.

Q. Did she go upstairs at all? A. No, sir.

Q. What did she say, if anything, when you told her to go upstairs and tell her papa that you wanted to see him?

A. She told me not to be in a hurry, and then I asked her where her mamma was and she said, "Up at Aunty's."

Q. Where were you sitting with reference to the door? I presume this is the front door that you refer to. A. Yes.

Q. Where were you sitting with reference to the door?

A. At the corner of the building, behind the door when the door would open. Not exactly behind it, but the door would open near me when it would open. Almost the position that I am here to this door (indicating door in courtroom) with the exception that I had my back to the door. I sat here (indicating).

Q. You really faced the door, that is, when the door would open, you would be facing the door?

[554] A. Yes.

Q. That is parallel with the front side of the building you would be looking. Do you understand what I mean? A. I don't know that I do.

Q. Would your line of vision be parallel with the front wall of the building where the door was?

(Testimony of W. H. Wooldridge.)

A. Yes.

Q. If you would look straight ahead from where you were sitting? A. Yes.

Q. When this door opened, you said two men entered? A. Yes.

Q. Did they come inside the house? A. Yes.

Q. Did they shut the door? A. Yes, sir.

Q. Then these two men were clear inside the house with the door shut?

A. Yes, sir, and their coat collars turned up.

Q. Were you looking straight at them?

A. Yes, sir, but I didn't see their faces.

Q. And you swear that you didn't know at that time who the men were? A. I did not. No, sir.

Q. And you are sure that they came right inside and the door was shut? A. Yes, sir.

Q. What was the first thing said by the men or either of them?

A. The man who was in the lead asked Laura where her father was. She said, "Up town." [555]

Q. What else?

A. And I think he said, "Then your father is not at home" and she says, "No, he is up town," and they turned and left, turned with their faces from me as they stepped out.

Q. Yes? Did you say a word at all while they were there?

A. I don't think that I spoke at all while they were in the room.

Q. Do you know if either of them spoke to you?

A. No, sir.

(Testimony of W. H. Wooldridge.)

Q. Did they say "Hello" or anything to you?

A. No, sir.

Q. Are you sure they didn't?

A. If they did, I don't remember.

Q. You wouldn't be positive whether they did or not?

A. They didn't turn so I could see their faces while I was there—while they were there.

Q. How long did you stay after they left, Mr. Wooldridge?

A. It was not a minute I don't think, because I got right up and followed them out. They possibly might have been twenty feet from the house.

Q. When you went out?

A. When I went out of there. They may have been a little farther, but not much.

Q. After you were all outside, that is, the three of you, the two men and yourself, you were within one hundred feet of them anyway.

A. Yes, I should say a hundred feet, within that, yes, sir.

Q. And which direction do you say they went from the house?

A. They went downstream or down the street.

Q. On Second Avenue would that be?

A. Yes, sir. [556]

Q. And you came upstream on Second Avenue?

A. Yes, sir.

Q. Did you follow them at all? A. No.

Q. They went one way and you went the other?

A. Yes.

(Testimony of W. H. Wooldridge.)

Q. Where did you go?

A. I went up Second street possibly two hundred feet, not to exceed three hundred feet, and I was thinking about the answer that she made me, the one she made to me and the one she made to them, and it aroused my curiosity, and then I wanted to know who those men were, and I turned and went back and asked her.

Q. Then you would state to the best of your recollection that you didn't come upstream from there, from the house, more than a block?

A. I don't think I did.

Q. And while you were going this block you were pondering about them, thinking this thing over, and decided to go back. Is that the idea? A. Yes.

Q. Did you go up this way as far as the Shaw House? A. I don't think so. No, I didn't.

Q. You are sure you didn't? A. No. I didn't.

Q. How long would you say you were gone from the Herrington house before you went back that time, that is, went back to the door, I believe you said?

A. Well, I walked slowly along. I was thinking over it, and I [557] don't know how long.

Q. Can you give us any estimate at all?

A. No. I won't.

Q. Would it be one minute or one hour?

A. It wouldn't be an hour and it was more than a minute.

Q. Was it five minutes?

The COURT.—Q. Did you say it was more than a

(Testimony of W. H. Wooldridge.)

minute or no more than a minute?

A. More than a minute. It was not an hour but it was more than a minute.

Mr. HEILIG.—Q. I want to get it as near as you can state. A. I don't remember.

Q. Was it five minutes?

A. I don't remember how long it was, because I was walking there and pondering over what—(interrupted).

Q. Were you walking all the time, that is, after you left the house when these two men left?

A. No.

Q. Were you standing?

A. When I got away, up the street a ways, I turned to see where those men were, and they were standing down below the house a ways. They seemed to be talking there.

Q. You could see them?

A. Then they turned and went on, and I went on my way up the street.

Q. How far had you gone, as near as you can remember, from the house when you first stopped and looked around to see where they were? [558]

A. Oh probably fifty feet or such a matter.

Q. And how long would you say that you stood there and watched them?

A. I didn't stand more than a minute or so.

Q. More than a minute or so?

A. Possibly not that long.

Q. Then I understand you turned and continued on upstream. A. Yes, sir.

(Testimony of W. H. Wooldridge.)

Q. How far then did you go before you stopped again? A. Well, I didn't go to the Shaw House.

Q. Did you stop again before you stopped and turned around to go back?

A. No. I don't think I did.

Q. Then you turned around and went back. Did you stop on the way back before you got to the house?

A. No, I don't think so. If I did, I don't remember of it.

Q. Do you remember whether it was cold or warm that night?

A. Well, it was fairly cold. I do not know the temperature, but it was a cold evening.

Q. Do you remember whether it was very cold or not, that is, to the best of your recollection. I don't want to know the exact temperature.

A. Well, I don't know.

Q. You don't remember?

A. No. I don't remember.

Q. Were you on Second Avenue all the time after you left that house until you went back that time?

A. Yes.

Q. Were you in the street or on the sidewalk?
[559] A. No, I was in the street.

Q. Then the best of your recollection is that you came upstream two or three hundred feet?

A. Yes, sir.

Q. Now Mr. Wooldridge, you interviewed somebody representing the Alaska Citizen about this potato deal, did you not?

(Testimony of W. H. Wooldridge.)

A. I talked with Mr. Caskey, yes, sir.

Q. Did you talk with Mr. Hess? A. No, sir.

Q. Did you give an interview to Mr. Caskey?

A. No, sir. We just talked the matter over.

Q. Did you give him any written statement, or anything? A. I did not.

Q. You talked the matter over? A. Yes, sir.

Q. Did you read what purported to be an interview with you in the Alaska Citizen of the twenty-first of February? A. Yes, sir.

Q. Was that a correct statement?

A. No, sir. Some of that is not right.

Q. What of that is not right?

A. I couldn't tell you unless I got the paper and read it over. I remember of reading some of the things at the time. I might state one that I can call to mind now.

Q. What was that?

A. That in that article it stated that I had told Mr. Caskey that I was being investigated by the grand jury. I told Mr. Caskey that I was being investigated by Mr. Miller, and that I had told Mr. Miller that I would like for him to make a thorough investigation, not the grand jury. [560]

Q. Well now, when you spoke to Mr. Caskey did he write down what you said? A. No, sir.

Q. Where did you see him when you spoke to him?

A. Over at his office.

Q. Over at the Citizen? A. Yes, sir.

Q. Did you go over there to tell this to him?

(Testimony of W. H. Wooldridge.)

A. Yes, sir. I went over there on purpose to tell him.

Q. Voluntarily of your own volition.

A. Yes, sir.

Q. And you say he didn't take it down and make notes of any kind?

A. No. He was not using his pencil.

Q. Were there any other incorrect statements in that interview? We will call it an interview. I mean the statement which was published.

A. Well I can't call them to mind just now.

Q. Did you read that the morning after it was published or the morning it was published?

A. Yes.

Q. Did it appear to you at that time that there were any inaccurate statements other than the one that you just stated about the investigation?

A. There is something, I just don't remember how that is worded, in regard to bringing an indictment. I don't recall now just how it is worded in that article, but as I recall it, I spoke to Mr. Caskey about it that I didn't see anything that had happened that could be—that there could be an indictment against me. [561]

Q. Did you tell Mr. Caskey about your having gone down to the Herrington house about potatoes?

A. Yes.

Q. Did he have that in the paper right?

A. The part that he had in the paper, if I remember, said that I called there to see about potatoes about half-past eight. He didn't tell about me being

(Testimony of W. H. Wooldridge.)

there in the morning?

Q. I see. That part was not complete then?

A. That part was incomplete. What was stated there was correct, but it was incomplete.

Q. Did you ever speak to Mr. Caskey about his not having the statement in just exactly the way you had stated it to him?

A. No, I didn't see Mr. Caskey.

Q. You haven't spoken to him since about that statement? A. No. I have not had any chance.

Q. Did you try to correct it in anyway? A. No.

Q. Not in any way you didn't try to correct that statement?

A. Well, I spoke to my attorney, Mr. Dodge about it and told him that that was not correct.

Q. When did you speak to Mr. Dodge about that, about what time?

A. Well it was during the week some time.

Q. Shortly after it was published? A. Yes.

Q. It came out on Monday of course. It was soon after that was it?

A. Yes. I spoke to him in the Federal Jail.

Q. When did you have occasion to read that article, when you were in the jail?

A. Yes, sir. [562]

Q. You saw the paper did you?

A. Yes. The paper was brought in there.

Q. Did you state to him any other inaccuracies besides the one you have spoken of just now?

A. I don't remember, Mr. Heilig.

Q. Did you and Dodge go over that article to-

(Testimony of W. H. Wooldridge.)

gether? A. No.

Q. Did you and Mr. Marquam go over it?

A. No.

Q. Have you read it more than once yourself?

A. Well, I might have gone over it a couple times there in the jail.

Q. You know pretty well what is in it, do you?

A. Yes. That is, I understood it at the time. I don't remember just each item.

Q. Do you remember the occasion of your telling the facts therein stated to Mr. Caskey?

A. Yes. I remember having the conversation with Mr. Caskey.

Q. When was that?

A. I think that was about Wednesday or Thursday following the night that I was at Mr. Rose's.

Q. Did you at that time attempt to state the facts as you understood them to Mr. Caskey, that is, of your visit down to Herrington's? A. Yes.

Q. Down at the Herrington residence the evening of February fourteenth?

A. Yes. I intended to tell him the story.

Q. Can you now think of any other thing which was stated in that statement as printed which was not as you told Mr. [563] Caskey?

(Defendant, by his attorney Mr. Marquam requests that if the witness is to be further questioned with regard to the statement, that the statement, should be produced and submitted to the witness so that he can refresh his recollection as to what is in the statement.)

(Testimony of W. H. Wooldridge.)

Q. I believe you stated Mr. Wooldridge, that you had not seen Laura with the exception of that time in April, which was a year ago, or did you state when you had last seen her prior to that time in April, 1915?

A. No. I didn't say. I said I hadn't seen her to speak to her. I was in here from the survey work on the twenty-first of June, and she may have been here and I might have passed her several times during the day.

Q. Just to see her on the street?

A. Just to see her on the street. And that is all I have seen her since at any time.

Q. That time at Ester you said you merely said, "Hello," something to that effect, or she said, "Hello" to you first.

A. Yes. She just nodded her head and spoke to us as she passed by.

Q. After you went back to Herrington's house, after you had taken this walk up towards the Shaw House, when you went back that time, what did you say to Laura, if anything?

A. When she opened the door, I said, "Laura, do you know who those men were that were here"?

Q. Did you tell her at that time that you were suspicious from the way those men had acted?

A. No, sir.

Q. Did you say anything of that kind to her at all? [564]

A. I said—When she said, "I don't know who they were," I said, "I would like to know." She said, "I

(Testimony of W. H. Wooldridge.)

think they are some men from the creeks.”

Q. You didn't tell her that you were suspicious and wanted to know who they were?

A. No. I didn't say a word about it.

Q. When you asked her who they were she said they were some men from the creeks? A. Yes.

Q. Did you tell her you were going to follow the men to find out who they were? A. No, sir.

Q. Well now, Mr. Wooldridge, if you had not seen Laura to talk to at any time with the exception of the times you have mentioned, why were you curious to know who these men were?

A. On account of the answer she had made to me when I asked for her father, and the answer she made to them when they asked her where her father was.

Q. The only things about those answers that didn't agree was that she had told you that he was upstairs and told them that he was down town?

A. Yes, sir.

Q. You knew or thought that she was lying to one of you?

A. Yes, she was lying to one or the other. And those men came in there, collars high, with their collars turned up, and then they turned from me. I didn't see their faces at all. It aroused my curiosity.

Q. That was, as you stated, a very cold day?

A. Yes. [565]

Q. The fact that their collars were turned up wouldn't be anything unusual would it?

(Testimony of W. H. Wooldridge.)

A. No. That wouldn't be anything unusual, and I didn't—

Q. It was the mere inaccuracy of the statement, or the difference in the statements she had made to you and to the two men that aroused your curiosity to such an extent that you made a special trip back to see about it? A. Yes. To see who they were.

Q. That was the only thing? A. Yes, sir.

Q. Why were you interested to know who they were, even if you thought she had lied to you?

A. That was just the reason I wanted to know, because if she lied to me I wanted to know why those men were there, or not why they were there, but who they were.

Q. Why did you want to know who they were? What difference did it make to you?

A. Because she had told those two men one thing and told me another.

Q. You didn't know Laura Herrington at that time any more than to just say "Hello" to her?

A. I have known her since childhood.

Q. You had had nothing to do with her?

A. No. I hadn't had anything to do with her.

Q. Had you had anything to do with the Herrington family besides this potato deal? A. No.

Q. You wanted to find out what was going on, did you?

A. Not particularly, but I wanted to find out why she would make [566] me that answer and make those other men another answer.

(Testimony of W. H. Wooldridge.)

Q. So it was just a matter of curiosity with you then? A. Yes, sir.

Q. Did you go home immediately after that, Mr. Wooldridge, that is, after you left her house?

A. Yes, sir.

Q. Are you sure that you didn't go home the first time you left her house in the evening?

A. No. I didn't go home the first time.

Q. Is that all the conversation that you had with Laura Herrington that time you went back to find out who the men were, just what you have related?

A. Yes. What I related on the questions to Mr. Marquam. Yes, sir.

Q. It was merely regarding who these men were and what they were there for, the conversation?

A. Yes, sir.

Q. Nothing else?

A. And then as I left she volunteered that I could bring those potatoes any time.

Q. Where did you go from there?

A. I went home.

Q. Do you remember about what time you got home? A. No, I don't.

Q. Did you go back to Herrington's house again that night?

A. After my second trip back there?

Q. Yes. A. No.

Q. After you went home then you didn't leave home that night? A. No, sir. [567]

Q. Was that the first time you had been home that night since you had left there that evening?

(Testimony of W. H. Wooldridge.)

A. Yes.

Q. Then you didn't go back home, and away, and then back again? A. No, sir.

Q. I believe you stated that you did deliver those potatoes the next morning.

A. Yes, sir.

Q. About what time?

A. About ten o'clock. It might have been a little before ten. About ten o'clock.

Q. Who was there that morning when you came?

A. I only saw Mr. Herrington and Mrs. Herrington.

Q. You didn't see Laura that time?

A. No, sir.

Q. What was Mrs. Herrington doing?

A. The first I saw her she was standing in the door. I rapped on the door and she answered it.

Q. Did you see Mr. Herrington when you entered the house? A. Yes, sir.

Q. What was he doing?

A. He was standing in the kitchen door.

Q. He was where?

A. She was at the front door. She came to the front door and opened that, and when she opened it he was standing in the kitchen door.

Q. You came in the front door, did you?

A. Yes.

Q. And you could stand in the front door and see the kitchen door in the house? [568]

A. Yes.

Q. Could you see right through the house?

(Testimony of W. H. Wooldridge.)

A. I couldn't see through the house, but I could see the kitchen door.

Q. Was he standing?

A. Yes. He was standing.

Q. Did you go back into the kitchen? A. Yes.

Q. Did you take the potatoes back there?

A. Yes.

Q. How many potatoes did you take there, one sack or two? A. One sack.

Q. What did you do with them?

A. I set them down on the floor in the kitchen.

Q. Did Mrs. Herrington go back to the kitchen with you? A. Yes.

Q. How long did you stay there at that time, about?

A. I don't think I was there more than three or four minutes.

Q. And you saw no one at that time except Mr. and Mrs. Herrington?

A. Yes, and Mr. Ed Hall came as I was leaving. I met him right at the door. I was binding the blankets back on my sled and he came along.

Q. Did you have any conversation with him at all?

A. Just passed the time of day as he walked in.

Q. When was the next time that you saw Laura Herrington, after this night that you left her at the door in her home?

A. At Mr. Rose's store, at the machine-shop.

Q. When was that?

A. It was the same day that I delivered the potatoes.

(Testimony of W. H. Wooldridge.)

Q. At night? A. Yes, sir. [569]

Q. What time would you say that it was when you saw Laura?

A. I should judge it was about eight o'clock.

Q. Where had you been that evening? Before you went to Rose's where had you been that evening of the fifteenth, that would be, I believe.

A. I was at the Odd Fellows' Hall.

Q. What time did you go there?

A. I went there directly after supper, possibly seven o'clock.

Q. What was going on at the Odd Fellows' Hall which required your presence, if anything?

A. I had built the fires there during the afternoon, and went back to take care of the fires and see that the room was in proper shape for the entertainment or for the meeting that was to be held that evening by the Rebekahs.

Q. What was there that required your presence there, if anything, besides tending to the fires?

A. Not any.

Q. You didn't have to stay there until any special time?

A. No. I went there and fixed up the fires and remained there until they gathered for their meeting.

Q. When you left there where did you go?

A. I went to Mr. Dodge's office.

Q. About what time was that. Do you remember?

A. I thought it was right close to eight o'clock when I left there.

(Testimony of W. H. Wooldridge.)

Q. I am just asking what your recollection is of it yourself. You thought it was about eight o'clock?

A. It was about eight o'clock when I was at Mr. Dodge's, near there. It was not eight, because it was eight when I was over at Mr. Rose's. I was only at Mr. Dodge's just a [570] few minutes.

Q. Was Mr. Dodge there?

A. When I went to Mr. Dodge's there were several men there, and they seemed to be engaged in something and I only stayed a few minutes.

Q. Did you have any conversation with anyone there at that time?

A. No. I don't think I did, only passing the time of day.

Q. And you think you just stayed there a few minutes. Then did you go across the street to Rose's?

A. Yes.

Q. Practically straight across?

A. I went straight across to the Wilson corner on Second and then down the street.

Q. What time would you say it was that you entered Rose's then, as near as you can remember?

A. Well, I remember it was not quite eight o'clock by his time, and when I looked at his time I asked him if his time was right, and he told me it was fast.

Q. Is that just what he said, it was fast, or what did he say?

A. I think he said it was seven minutes fast, the exact words that he said.

Q. Now, when you first entered Rose's shop, how were the lights, that is, with reference to the front

(Testimony of W. H. Wooldridge.)

room and the back room?

A. He had one light in the front room.

Q. Burning?

A. Burning, and one in the back room burning.

Q. Was it a big light, or what kind of a light in the front room? A. No. It was a small one.

Q. Does he have more than one light in the front room? [571]

A. Yes. He has one very large light, I judge a hundred candle-power.

Q. And one small one? A. And one small one.

Q. And the small one, I believe you say was burning? A. Yes.

Q. Was there a light in the back room burning?

A. Yes, sir.

Q. Where was Mr. Rose?

A. Mr. Rose was lying on his bed when I went in the back room.

Q. Did you go right to the place, right into the back room without stopping when you entered?

A. No.

Q. What did you do?

A. When I went into the front door I stopped long enough to turn that light off.

Q. Before saying anything at all? A. No, sir.

Q. Or did you say something? A. No, sir.

Q. Tell us what you did when you went into the front room.

A. I went into the front room and I said, "Mr. Rose, it seems to me you are very extravagant with your electricity."

(Testimony of W. H. Wooldridge.)

Q. You just assumed he was in the back room?

A. Yes. I saw the light there.

Q. You couldn't see him though?

A. I couldn't see him from where I was. And he says, "Yes. I was too lazy to get up and turn it off. Turn it off will you" and I turned it off and went back where he was. [572]

Q. What did you do after you got back to where he was?

A. Well, I stood there and I talked with him a few minutes. The first thing I think I said was "How is business to-day?" and he said, "About as usual."

Q. Were you standing or sitting at that time?

A. I think I was standing up at that time.

Q. What was the next thing said that you remember?

A. I think we talked about picture shows.

Q. Do you know what you said about the picture show?

A. I don't remember whether I asked him if he was going to the show or not. I think I had that in mind when I asked him in regard to the time.

Q. Whether or not he was going to the picture show?

A. Because if he was going I would only have a few minutes to visit with him.

Q. Because by the right time, as you understood it, it was a few minutes to eight at that time. Is that the idea? A. Yes, sir.

Q. Well, do you remember what he said about picture shows?

(Testimony of W. H. Wooldridge.)

A. No, I don't. I don't remember.

Q. Did you say whether or not he was going?

A. No.

Q. Do you know whether you asked him?

A. I don't remember whether he told me or not.

Q. Do you remember whether you asked him or not, whether he was going to the show, or not, that night?

A. No, I don't think I did.

Q. What was the next thing talked about?

A. Then he asked me something about "What is the news?" [573]

Q. Yes?

A. Then I told him the circumstances of my going down to the Herrington house to see about those potatoes and that I found that girl alone there and what she had said to me about where her father was when I went in, and the two men coming in and the answer she had made them when they asked her where her father was.

Q. You told him all about that, did you?

A. I told him that, yes, sir.

Q. Did you say anything else about Laura Herrington at that time?

A. Yes. He talked about the question of those girls, the way he put it "Those girls are running around to men's cabins, and somebody is going to get into trouble over them."

Q. He volunteered all that himself?

A. Yes. And then he went right on and told about that those girls would be taken to the district attorney's and then from there to one of the assist-

(Testimony of W. H. Wooldridge.)

ants or to the grand jury room and they would be sweated out.

Q. That was all brought up by him, was it?

A. Yes.

Q. Following your talk about the potatoes, of course? A. He followed that.

Q. At that stage of the proceedings in his shop had Laura Herrington come in yet or not?

A. No, sir.

Q. What else was said then before she came in, that you remember? [574]

A. I don't remember of anything being said.

Q. Do you remember of anything else at all being said before she came in?

A. It has been stated here that there was keys talked about, but I don't remember.

Q. Never mind what has been stated. Do you remember anything about keys yourself? A. No.

Q. Absolutely nothing?

A. No. I don't remember about the key being spoken of. It may have.

Q. You don't remember a word about a key?

A. It may have been, I am not saying it was not.

Q. Do you remember a word about keys at all?

A. No. I don't remember.

Q. Do you remember a word at all about picture shows besides what you have heard testified to here? Do you remember it yourself? A. No.

Q. Do you remember anything about picture shows? A. No.

Mr. MARQUAM.—Besides what he has testified

(Testimony of W. H. Wooldridge.)

to, or besides what others have testified to?

Mr. HEILIG.—Q. I mean, aside from what has been testified to by others which you have heard, do you have any independent recollection of your own about that talk about picture shows? A. No.

Q. You just testified to that, about the picture shows, because you heard others testify to it?

A. No. I say we did talk about picture shows.
[575]

Q. Perhaps you misunderstood me. You do remember, of your own recollection, the talk about picture shows?

A. Yes. We said something about picture shows.

Q. Do you remember now of your own recollection any talk about keys at all? A. No.

Q. You don't?

A. No. We didn't talk about keys that I remember.

Q. What else do you remember that you talked about, about other subjects, if any?

A. We didn't talk about anything more.

Q. As you remember it all that was said was about the light first, then some talk about picture shows, then some talk about your visit at the Herrington's—the potato deal, and what came from him in that connection about the Herrington girl.

A. Yes.

Q. Is that all you remember, all the different subjects?

A. Yes, besides the question I asked him, "How

(Testimony of W. H. Wooldridge.)

is business to-day?"

Q. How long was it after this talk about the Herrington girl that Laura came in?

A. She came in almost immediately after that.

Q. What time of day did you say it was that she came in?

A. Around about eight o'clock I should judge.

Q. Just about eight o'clock. Did you know she was coming there? A. I did not, no, sir.

Q. You had no idea? Did you know whether or not Rose knew?

A. If he did he had not said anything to me about it.

Q. You don't know whether he knew she was coming or not? A. No. [576]

Q. Now, how long after Laura Herrington came into the back room where you and Rose were was it until you went out into the front room?

A. I got up and went right out.

Q. Did you say "hello" to her?

A. No. I didn't speak to her at all.

Q. Did Rose speak to her?

A. She said "hello" as she came in and Mr. Rose answered her.

Q. You got up immediately. You were sitting down, were you then? A. Yes, sir.

Q. You got up immediately and went into the front room?

A. Got up and buttoned up my coat. I stood there when I was buttoning up my coat and I went on out into the front room.

Q. What particular reason did you have for going

(Testimony of W. H. Wooldridge.)

out into the front room, any?

A. Because when she passed around my chair, going around and back to the point where Rose was, she said "Somebody is following me. I want to hide" and I got up and went out into the front room.

Q. That was the only reason you went out, or what was the reason?

A. The reason I went out, I was going right out front to see if I could see who was following her.

Q. It was upon hearing those words from her that somebody was following her which put into your mind the idea of going out and seeing. Is that the idea? A. Yes.

Q. It was not the mere fact that she came in and you wanted to [577] get out?

A. No. I didn't think anything of that.

Q. That didn't bother you at all?

A. No, sir, but when she made that remark that somebody was following her, then I got up and started and walked out into the front room.

Q. What did you do? Why did you step out there into the front room?

A. I stopped to—I felt around and turned the light on. Well, I could see dimly where the light was and I got hold of that and turned it on.

Q. You could see from the light in the back room about where this light was?

A. About where it was.

Q. You are sure now that you turned it on?

A. Yes. I turned it on.

Q. Which one did you turn on at that time?

(Testimony of W. H. Wooldridge.)

A. The small one.

Q. Was the big light turned on at all that evening that you know of?

A. I think it was on when I came back from the corner of Second street.

Q. That would be just a few minutes after you had gone out that you came back? Is that the idea?

A. Yes, sir.

Q. You didn't turn it on yourself? A. No, sir.

Q. Well, now, are you sure whether it was on or not when you came back? [578]

A. No, I wouldn't be positive, but I think it was. I think it was the larger one that was on.

Q. And the only reason that you went out there was to see, if you could, if anybody was following Laura, and probably who it was, if there was anyone?

A. Yes, sir. That is the reason I started out of the building just then.

Mr. HEILIG.—I believe the Court ruled that before speaking any more about this statement, that I should show it to Mr. Wooldridge.

The COURT.—Yes.

Mr. HEILIG.—Q. (Handing a paper to witness.) I want you to read your statement here. Read it all, if you care to. (Witness takes paper and spends a considerable time reading or examining it.)

A. This first paragraph where it is stated that I said that the investigation and indictment by the grand jury was the result of having, as a notary public, affixed my notarial seal to two affidavits one

(Testimony of W. H. Wooldridge.)

against District Attorney Roth and the other against United States Marshal L. T. Erwin, is practically correct.

Q. Yes? Just continue until you find something that is not correct, Mr. Wooldridge, and **as you come** to anything that appeals to you as not being correct, just state it?

A. Now, I do not know when these statements were made, the paragraph here starting: Beyond denying his guilt of any crime, Mr. Wooldridge did not mention anything concerning the first count in the indictment. He stated, however, that, though not knowing the counts would be brought, the second [579] count was a deliberate trap laid to catch him in connection with the Herrington girl." I did say that I believed that that was a deliberate trap.

Q. Yes?

A. The next paragraph: "I had a potato deal pending, and I called there in the evening." That was correct, with the exception of being incomplete.

Q. That you had been there in the morning, was the only difference.

A. Yes, sir. Another paragraph that I notices is: "I immediately decided to go home and so told the little Herrington girl good night. All the way home I pondered on that." I didn't make any such statement on that.

Q. You notice I have that underlined there.

A. Yes.

Q. You didn't make any such statement. Are you willing to say, then, that Mr. Caskey was wrong in

(Testimony of W. H. Wooldridge.)

so quoting that in quotation marks as part of your statement; that part you have just referred to?

A. That is not in quotation marks.

Q. I beg pardon. Most of it is. That is my mistake, I presume.

A. It says here: "I finally decided that I would return to the Herrington home." That was all right, with the exception of what was said prior to that; that I had gone home and then returned. That I had gone up the street a ways, it should be.

Q. That is the only correction you would make there; that instead of going home, you went up the street a little ways and then returned?

A. Yes. Here is another statement that I am not sure that I [580] said to Mr. Caskey: "Both Mr. Rose and I asked her for her seeming agitation." That was not asked.

Q. You don't remember anything of that kind being stated to Mr. Caskey? A. No.

Q. You understand what we are trying to do now. What I am trying to do is to find out whether or not that is written as you stated it to Mr. Caskey; not as to what the fact might be.

A. A portion of this is—(interrupted).

Q. And I want you to pick out what you consider inaccuracies in the publication. That is what you did not state to Mr. Caskey.

A. Well, I see that he has here that, in using the language it says: "We told her to go into the back room." It wasn't necessary. She was already in the back room. That is not right.

(Testimony of W. H. Wooldridge.)

Q. You didn't tell that to Mr. Caskey that way.

A. No. I wouldn't have told him that because that would have been uncalled for and not true. Here is another: "Shortly after that I heard a scratching in the hallway next to the shop and decided to go out and investigate." I don't know where he got that.

Q. Will you swear, Mr. Wooldridge, that you did not tell Mr. Caskey that you heard a scratching in the hall?

A. No, I didn't tell him anything of that kind.

Q. You are willing to swear that you did not?

A. I didn't tell him anything of that kind.

Q. Do you know where Mr. Caskey got that information? [581]

A. No. I do not. It was not from me.

Q. All right.

A. Leaving this paragraph out, where I say that I started toward Second Street or the Wilson corner, that I met Deputy Marshal Miller; that I reached the men I saw there and that they were Deputy Marshal Miller—deputy marshals, and one of them was Chief Deputy Marshal Miller. I don't remember of ever making that statement to him, because I don't think Mr. Miller was right there then. There was two of them, and Mr. McMullen was one and I think Mr. Frank Hall the other, and I don't know who the third man was.

Q. You understand I am not trying to make this statement correspond necessarily with the facts of the case as you are now testifying to them—(inter-

(Testimony of W. H. Wooldridge.)

rupted). A. Yes, sir.

Q. I am just concerned with whether or not you stated those facts to Mr. Caskey and he published them as you stated them.

A. No. They are not published as I stated them.

Q. That is, as you pointed them out in the various places.

A. Here is another, that I don't remember of saying to Mr. Caskey, because I had no reason for saying it: "I am innocent of any crime whatever. I feel that charges are going to be preferred against me by the grand jury." I didn't say that at all. I might have said that, "I am innocent of any crime." I don't deny but what I may have said that, although I do not remember of it. And the charges or the investigation was being made by Mr. Miller, and that I didn't think that it would ever reach the grand jury. Here is another statement that I made I think: "I have affixed my [582] notarial seal to two affidavits, one against District Attorney Roth and the other against Marshal Erwin. Of course they will try to send me over the road for them." I may have said that.

Mr. HEILIG.—Read it all.

The COURT.—Q. As I understand, that portion of the statement you are not sure about.

A. No, I may have said that. I think Mr. Erwin has had that feeling for me for sometime, that he would do that if he could.

(Plaintiff moves that the answer be stricken as not responsive to any question. Motion granted.)

(Testimony of W. H. Wooldridge.)

Mr. HEILIG.—Q. Then would you say that this article which you have just read and which purports to be an interview given by you to the Citizen,—Alaska Citizen—was accurate or not? Does it contain statements which you made to Mr. Caskey, or is it not an accurate statement?

A. It contains some statements that I made to him, and some that I did not make.

Q. But only the instances which you mentioned upon just reading that article,—the statements therein made were not statements as you had stated them to Mr. Caskey.

A. The statements that I referred to as not being true are statements that I did not make.

Q. To Mr. Caskey? A. To Mr. Caskey.

Q. But I understood you to say that you did not at any time speak to Mr. Caskey since and tell him that he had misquoted you.

A. No, sir, because I didn't see that paper until I was in jail. [583] I have not had any opportunity to speak to him.

Q. You testified you had made no attempt to have it corrected in any way.

A. I spoke to Mr. Dodge about it.

Q. About having it corrected?

A. No. I told him that the story was not correct.

Q. That is all you did about it?

A. I asked him if he would see Mr. Caskey about it. That is all I said. I left it to him to do as he thought best.

Q. And you had the paper, I believe you said,

(Testimony of W. H. Wooldridge.)

and had read it at least a couple of times—this article? A. Yes.

Q. In the jail? A. Yes.

(Here the Court takes a recess until 2 P. M. to-day, and the jury, after being admonished as usual by the Court, leave the courtroom in charge of the bailiffs. After said recess, and at 2 P. M., the defendant and his attorneys, and the district attorney, and the jury are in court, and trial proceeds.)

Witness W. H. WOOLDRIDGE resumes his testimony on cross-examination. [584]

Q. Mr. Wooldridge, after you left the shop of Mr. Rose, that is just after Laura Herrington had come in and told you that somebody had been chasing her and she wanted to hide, or something to that effect, you left the shop. Just when did you meet Marshal Miller with reference to that time?

A. I don't remember just at the point that I met him. There were three around there, if I remember, Mr.—I took it to be Mr. Frank Hall and Mr. McMullen and one other man whom I did not recognize, and I do not remember just at what point we met Mr. Miller.

Q. Who did you first talk to, which one of those men? A. Mr. McMullen.

Q. And was it Mr. McMullen who asked you to go to the marshal's office?

A. Yes, sir. Well, to go back to Mr. Rose's. He asked me to go back to Mr. Rose's when I first met him at the corner.

Q. But afterwards who asked you first to go to the

(Testimony of W. H. Wooldridge.)

marshal's office, do you remember?

A. I think that was Mr. Miller.

Q. You think Mr. Miller was in Rose's?

A. It seems to me as though he was. But I wouldn't be positive now which one asked that question.

Q. At any rate when you got back to the marshal's office, was Mr. Miller with you then—not "back," but when you went to the marshal's office?

A. If he was not there right with us, he was there immediately after that. I think he was with us when we got to the marshal's office.

Q. Who took you into the marshal's office? Who was with you [585] when you went in there?

A. Mr. McMullen and Laura Herrington and there was some others, but I don't remember. I don't remember whether Mr. Rose had got up with us then or not, but I think he was there.

Q. Referring to the private office of the marshal or the back room. Do you know the room that I refer to? A. Yes.

Q. Did you go into that room?

A. We went directly into that room.

Q. Will you name all the persons that were in that room the first time you went into it that night.

A. There was myself and the girl Laura Herrington and Mr. Rose and I believe it was Mr. Miller who walked in there with us.

Q. At first? A. Yes, sir.

Q. Those four. Did you see Mr. Roth at that time? A. No, sir.

(Testimony of W. H. Wooldridge.)

Q. Did you see Mr. Roth and talk with him in that back office? A. No, sir.

Q. Did he go into that office at all that night?

A. He came in at the front door.

Q. That would be into the front part of the marshal's office, in front of the counter.

A. Yes, sir.

Q. Did he talk to you at all? A. No, sir.

Q. Well, now, when you and Laura Herrington and Rose and Miller were in this back room of the office did Mr. Miller, during the conversation which ensued there, ask you if you had been [586] or why you had been, at the Herrington house the night before, or words to that effect? A. Yes, sir.

Q. Did you at that time tell him that you had not been there? A. No, sir.

Q. Did you deny that you went there the night before?

A. He asked me what I was doing there when he and Mr. Berg went in, and I told him I went there to see potatoes, to see about some potatoes. He asked me why I went back there. He asked me if I had been there since, and I told him "No."

Q. That is an explanation, but it is not an answer to the question. Did you at any time in that office that evening deny to Mr. Miller that you had been at the Herrington residence the evening before?

A. At all?

Q. Yes. A. No, sir.

Q. Did you that evening deny that you had gone

(Testimony of W. H. Wooldridge.)

back to the Herrington residence a second time that evening?

A. I didn't understand his question then. He asked me if I had gone back again and I told him no, but I thought he meant the day of the evening that we were assembled in marshal's office, but when he called my attention and asked me if I hadn't gone right back that same evening, I told him I had.

Q. When he asked you if you had gone back and you said "No," you say now you didn't understand him; but at any rate, you said "No." Did he not ask you then, in substance, if that answer which you had just made then was as true as [587] anything else which you had told him at that time. Did he use words to you to that effect?

A. I don't remember it if he did.

Q. You would not deny that he did?

A. No, no. I wouldn't deny it, but I don't remember it.

Q. You say positively you do not remember such conversation?

A. He may have said it, but I don't remember it.

Q. Anyway, if he asked you if you went back and you said "No," it was through a misunderstanding?

A. Yes, sir, because when I understood his question, I answered him.

Q. Now, on the fourteenth day of February, did you either give or sell to Mrs. Herrington any whiskey? A. I did not.

Q. You say you did not, either on the fourteenth or the fifteenth? A. No, sir.

(Testimony of W. H. Wooldridge.)

Q. Have you, at any time, Mr. Wooldridge, taken any whiskey to Mrs. Herrington? A. No, sir.

Q. Has she at any time given you money to go and buy whiskey for her? A. No, sir.

Q. Have you at any time in the past procured anybody else to buy whiskey for you to take to Mrs. Herrington? A. No, sir.

Q. At no time? A. No, sir.

Q. And you state positively that she has never at any time [588] asked you to go and get whiskey for her? A. No, sir, I didn't say that.

Q. I asked that as a question.

A. She has asked it, yes.

Q. Has she given you money at any time to go and get whiskey for her? A. No, sir.

Q. And you deny positively that you at any time ever brought whiskey to her?

A. I have not taken her any whiskey.

Q. Now, this first time that you and Mr. Miller and Mr. Rose and Laura went into the back room of the marshal's office, state as you remember it just what was said upon entering the office.

A. When we first entered the office, Mr. Miller asked one of the deputies, I think it was Mr. Berg, to step to the door there and see that we three didn't hold any conversation, or didn't talk, and he would see if he could find Mr. Roth. We remained there a few minutes and Mr. Roth came in at the front door. I was sitting where I could see the front door and I saw him come in. He and Mr. Miller stood at the front door and talked for a minute or two, and

(Testimony of W. H. Wooldridge.)

Mr. Roth went away. Mr. Miller came back into that private office and said "You fellows come in here. I want a witness to what will be said to the questions I am going to ask," something to that effect, and I think it was Mr. Berg, and one other—I don't know really which one it was—that came in there.

Q. Was there no conversation then between you and Mr. Miller [589] in that private office before he called in these two men whoever they were?

A. I think that he asked the girl the question why she was up at Rose's.

Q. Yes?

A. And he told her that she had gone up there to meet me.

Q. You say he told her, or she told him?

A. She told him, she says, "I went up there to meet him," and pointed toward me.

Q. Didn't Mr. Miller at that time, and before these two deputies you speak of came in, ask you why you were meeting Laura Herrington up at Rose's?

A. Well, I have just forgotten whether it was him or someone else asked what these meetings meant.

Q. I mean before anybody was in this office, with the exception of you four—you, Miller, Rose and Laura Herrington.

A. I am telling you that I don't remember whether it was Mr. Miller or not that asked that question, but it may have been Mr. Miller before the deputies were there. He wanted to know what those meet-

(Testimony of W. H. Wooldridge.)

ings meant up there, and I told him I would like to know, too.

Q. Did you at that time and at that place, Mr. Wooldridge, tell Mr. Miller that Laura came running in there in rather a nervous condition, and stated to you and Mr. Rose, or to whoever was in there, that she wanted to hide; that somebody was following her?

A. I don't remember that I said she was nervous or excited. I may have said that. She was a little nervous when she came in there. [590]

Q. Did you tell Miller that at that time?

A. I don't remember whether I did or not.

Q. Is it not true that you stated that to Mr. Miller, or that in substance to Mr. Miller, and that Laura Herrington then spoke up and said that you were lying, that that wasn't so?

A. No, not at that time.

Q. That was at a point afterwards when the other deputies had come in, was it?

A. Well, I don't know whether they were present or not, but it was not at that point in the conversation that she made that remark.

Q. Now I am trying to find out what conversation was entered into between you four people in that office before the other deputies came in there. Can you state whether that conversation was held before the other deputies came in there or after?

A. I think it was after.

Q. Can you remember anything else that was said, before those two deputies came in, between you and Mr. Miller, or between Laura and Mr. Miller?

(Testimony of W. H. Wooldridge.)

A. No, I don't know that I do.

Q. Very well then. Then he called in two deputies you state? A. Yes, sir.

Q. What conversation ensued then as you remember it?

A. He said he wanted them to hear the questions and answers that were made there, or the conversation.

Q. Yes?

A. And then he asked that girl, he asked Laura, why she was up [591] at Rose's and she said she went up there to meet him, pointing to me, and he asked her if she had made arrangements, and she said, "Yes." He wanted to know what she was going there for and she told him that I had told her that I wanted to do something with her, and he said what was that, or he asked her a question to lead out that, and she said "He wanted to have a piece of me," and then I told Mr. Miller that there was nothing to that; that I deny it.

Q. Did you state to him at that time, or about that time, that she had come in there? A. Yes, sir.

Q. And told you that she wanted to hide?

A. Yes, sir. And that was the time when I made that statement to Mr. Miller that she passed around my chair and said she wanted to hide; that somebody was following her, and she said, "It is a lie."

Q. Now to go back for a minute to the time that you left the Herrington house and walked upstream, as you said, a little ways— A. Yes.

Q. —and then went back, just before you went

(Testimony of W. H. Wooldridge.)

into the house, or rather went to the door of the house this second time in the evening did you look to see whether these two men who had been there before were gone? A. No, sir.

Q. Did you look to see if you could see them?

A. No, sir.

Q. You didn't even look down the street where you had seen them [592] a few minutes before?

A. It wouldn't be necessary. I was going right in that direction. No, sir.

Q. Did you see anybody there? A. No, sir.

Q. And you can't give us any estimate as to what time it was from the time you left the house that evening until you went back.

A. No. I don't know how long it was exactly.

Q. You hadn't paid any attention to it?

A. No, I don't know, because I was pondering in my mind why she would make those answers.

Q. And you were standing right out in the street on Second Avenue within a hundred yards of the house all this time? A. No. I didn't say that.

Q. I believe you did. What did you say?

A. I said I didn't think I had gone more than three hundred feet, but I didn't say I was standing there all this time.

Q. Well, possibly.

A. I don't know how long you have reference to.

Q. All the time that you were away from the house you were either standing or walking in the middle of Second Avenue were you not?

A. Well, I was in that neighborhood, yes.

(Testimony of W. H. Wooldridge.)

Q. And all that time you were within one hundred yards, or three hundred feet, as you have testified, of the Herrington house?

A. Well, I don't think I was further than that. I didn't measure it, Mr. Heilig, but I don't think, though, I was further than that. [593]

Q. Did you see anybody going into or towards the Herrington house during that time? A. No, sir.

Q. Could you see the front of the Herrington house from where you were at all times, if you had been looking?

A. I may have. I don't remember whether I could have or not.

Q. I believe that you stated that you interviewed or talked with Mr. Caskey about this, Mr. Wooldridge? A. Yes.

Q. About the part that was put in the paper?

A. Yes.

Q. Was there anybody else present listening to that conversation?

A. Not that I know of. I don't think anyone heard it.

Q. You didn't see anyone there? A. No.

Q. Do you remember when you said it was?

A. Well, I think it was Wednesday or Thursday following the Tuesday that this took place at Mr. Rose's shop.

Q. Was this out in the printing shop, or in the other room, over at Caskey's?

A. It was the second room. No, it was not the printing shop. It was the one behind.

(Testimony of W. H. Wooldridge.)

Q. It was not in the room where the machinery is?

A. No.

Q. That is at the Alaska Citizen office?

A. Yes, sir.

Q. Over on Garden Island? A. Yes, sir.

Mr. HEILIG.—That is all. [594]

Redirect Examination.

(By Mr. MARQUAM.)

Q. In the first paragraph of this story that was submitted to you and you read you said that it was substantially correct. That is the one about your reference to having—the result of your having affixed your notarial seal to two affidavits.

(Plaintiff objects, as irrelevant, incompetent and immaterial and not redirect examination. All the witness was asked to do was to put out the errors in that statement. Objection overruled.)

Q. In that paragraph, this language is used: “He stated that he was innocent of any crime, and that his investigation and indictment by the grand jury was a result of his having done these things.” Did you make any statement to that effect?

A. That couldn’t be true, because I wasn’t indicted at that time, or I didn’t know the grand jury was investigating.

Mr. MARQUAM.—That is at the head of the story and is not within any part of the article which is enclosed in quotation marks. That is admitted?

Mr. HEILIG.—That shows for itself. Yes.

Mr. MARQUAM.—Q. You don’t know who wrote this story, do you? A. No, sir.

(Testimony of W. H. Wooldridge.)

Q. Did Mr. Caskey write it, do you know?

A. I do not know who wrote it.

Q. Mr. Wooldridge, after you had left the Herrington house at that time, the last time that you went there and came away, where did you go? [595]

A. On Monday evening?

Q. The first time you were there. The first time you went down there.

A. I got to thinking about that afterwards, and I think I might have been mistaken about that.

Q. Just state, if you think you are mistaken.

A. When I left the Herrington house the second time to start home, I think I stopped at the City Hall. I expected to meet my daughter there, because the children of the school were going to the meeting to listen to the council meeting that night. I think I went from the Herrington house there.

Q. You were up at the council chambers at the time the children were there to listen to the proceedings? A. Yes, sir.

Q. That is the school children? A. Yes, sir.

Q. And you think this is the night that you were going home and you stopped in there?

A. I think that was the same night.

Q. After making that stop you went away.

A. Yes. I went from the council meeting, home.

Mr. MARQUAM.—That is all.

Mr. HEILIG.—That is all.

Mr. MARQUAM.—That is our case.

Defendant rests. [596]

**Testimony of Mrs. Exena Herrington, for Plaintiff
(in Rebuttal).**

Mrs. EXENA HERRINGTON, a witness for plaintiff in rebuttal, heretofore sworn, testified as follows:

Direct Examination.

(By Mr. ROTH.)

Q. Mrs. Herrington, did Mr. Wooldridge ever bring you any whiskey before this time that he brought this whiskey on the day that he came down there to see about the potatoes?

(Defendant objects as an attempt to impeach the defendant upon an immaterial matter, on an issue outside of the case and if the defendant had the particular time so as to trace the matter up, the defendant would not object. It is absolutely incompetent, irrelevant and immaterial, and an attempt to impeach the defendant upon an immaterial matter. Objection overruled. Defendant excepts. Exception allowed.)

A. Not the same day. Yes, the same day.

Q. How many times did he bring you whiskey that day? A. This once.

Q. Just once. Did he ever at any time before, years ago, bring you whiskey?

(Defendant makes the same objections, which are overruled, and an exception asked and allowed.)

A. A long time ago.

Q. How many times did he bring you whiskey a long time ago?

(Defendant makes the same objections, which are

(Testimony of Mrs. Exena Herrington.)
overruled and an exception allowed.)

A. I can't say how many times.

Q. Many times?

(Defendant objects as incompetent, irrelevant and immaterial. Objection overruled. Exception allowed.)

A. Oh, many times.

Mr. ROTH.—That is all.

Mr. MARQUAM.—No questions.

Mr. ROTH.—The Government rests. [597]

TESTIMONY CLOSED.

(The Court takes a ten minute recess, and the jury, after being admonished as usual by the Court, withdraw from the courtroom in charge of the bailiffs; and, after the recess, the defendant and his attorneys and the district attorney and the jury are present; and the Court orders the jury to withdraw from the courtroom, and, after being admonished as usual, they withdraw in charge of the bailiffs.)

Motion of Defendant to Strike Testimony of J. H. Miller, etc.

Mr. MARQUAM.—The defendant moves that all of the testimony of the witness J. H. Miller, with reference to what Laura Herrington told him during the month of February, 1916, as to Wooldridge having sexual intercourse with her, and all that testimony relating thereto, be stricken upon the same grounds and for the same reasons that were assigned in defendant's motion, at the time the testimony was given, to wit: That it was hearsay, said

statements of said Laura Herrington to the witness Miller having been made some fourteen months after the alleged offense occurred.

That is the first motion.

**Motion of Defendant to Instruct Jury to Return
Verdict of not Guilty on First Count of
Indictment.**

The defendant further moves at this time that the Court instruct the jury to return a verdict of not guilty upon the first count, for the reason that neither the first count of the indictment herein states facts sufficient to constitute a crime; for the further reason that the evidence produced in this case fails to establish such allegations of the indictment as would be sufficient to corroborate a crime or of the proof of a crime; that the evidence introduced in this case is insufficient to justify a verdict of guilty upon the first count of said indictment, and that if the jury should return a verdict of guilty upon said first count it would be the duty of the Court to set said verdict aside and grant a motion for a new trial. [598]

**Motion of Defendant to Instruct Jury to Return
Verdict of not Guilty on Second Count of
Indictment, etc.**

Defendant further moves the Court to instruct the jury to return a verdict of not guilty upon the second count in said indictment for the reason that the allegations contained in said second count in said indictment are not sufficient to constitute a crime in that there are no facts alleged of any attempt, no

facts alleged as to the commission of any acts, or the attempted commission of any acts, towards the consummation of the crime of rape; for the further reason that the evidence introduced in this case is insufficient to support a verdict of guilty, and the testimony in this case shows, upon the part of the prosecution—assuming the same to be true—tends to prove only acts of preparation, and does not even tend to prove any acts or an attempt to commit any acts towards the consummation of the offense alleged, and that if the jury should return a verdict of guilty upon said second count it would be the duty of the Court to set said verdict aside and grant a new trial.

With regard further to the motion directed to the second count, defendant assigns the further reason for sustaining said motion that said second count in said indictment does not attempt to state the commission of any crime.

Mr. ROTH.—We resist the motions.

The COURT.—The first motion will be denied and an exception allowed. The second motion will be denied and an exception allowed. And the third motion will be denied and an exception allowed.
[599]

The opening argument to the jury was made by Reid W. Heilig, Esq., on behalf of the Government, followed by B. A. Dodge, Esq., and Thomas A. Marquam, Esq., who respectively presented arguments to the jury on behalf of defendant, and the closing argument to the jury was made by R. F. Roth, Esq., on behalf of the Government.

Thereupon the Court read its written instructions to the jury as follows: [600]

[Title.]

Instructions to the Jury.

GENTLEMEN OF THE JURY:

I.

The defendant, W. H. Wooldridge, has been accused by the grand jury and is charged in Count I of the indictment in this case with the crime of rape, and is charged in Count II of said indictment with the crime of attempt to commit rape; and he is now on trial before you for said crimes as charged.

Count I of the indictment charges that the said W. H. Wooldridge, on the twenty-third day of December, 1914, at Fairbanks, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, and within the jurisdiction of this Court, did then and there wilfully, unlawfully and feloniously carnally know and abuse one Laura Herrington, a female child then under the age of sixteen years, to wit of the age of thirteen years, he, the said W. H. Wooldridge then and there being a male person over the age of twenty-one years.

And Count II in the indictment charges that the said W. H. Wooldridge, then and there being a male person over the age of twenty-one years, on the fourteenth day of February, 1916, at Fairbanks, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, and within the jurisdiction of this Court, did then and there, wilfully, unlawfully and feloniously attempt to unlawfully and feloniously carnally

know and abuse one Laura Herrington, she being then and there a female person under the age of sixteen years, to wit of the age of fourteen years, by then and there procuring said Laura Herrington to consent to meet him, the said W. H. Wooldridge at that certain place in Fairbanks known as J. P. Rose's repair-shop, [601] situate on Lacey Street, between First and Second Avenues, for the purpose of having unlawful and felonious sexual intercourse with him, the said W. H. Wooldridge, and by meeting the said Laura Herrington at said shop on said day, pursuant to said arrangement, with the unlawful and felonious intent to then and there carry out said arrangement and to carnally know and abuse said Laura Herrington, but the said W. H. Wooldridge was prevented and intercepted in the perpetration of said crime.

That the acts done by him, the said W. H. Wooldridge, tended to but failed to effect the commission of the crime of rape, and that by reason thereof the said W. H. Wooldridge did wilfully, unlawfully and feloniously commit the crime of attempt to commit rape.

II.

You are instructed that in this case the jury and the Judge of this court have separate functions to perform.

It is your duty to hear all the evidence, all of which is addressed to you, and to decide thereupon all questions of fact.

It is the duty of the Judge of this court to instruct you upon the law applicable to the facts and

evidence in this case, and the law makes it your duty to accept as law what is laid down as such by the Court in these instructions.

And you are instructed that these instructions are to be taken and considered by you together as a whole.

III.

You are instructed that the indictment is a mere accusation and is not, in itself, any evidence of the defendant's guilt.

IV.

The defendant is presumed to be innocent of the crimes charged against him by the indictment until he is proven guilty beyond a reasonable doubt, by the evidence produced in this case and submitted to you, and this presumption of innocence is a right guaranteed to the defendant by the law and remains with him and should be given full force and effect by you until such time in [602] the progress of the case as you are satisfied of his guilt from the evidence beyond a reasonable doubt. The presumption of innocence is not a mere form to be disregarded at pleasure, but it is an essential and substantial part of the law of the land and binding on the jury in this case, as in all criminal cases.

V.

You are instructed that the term "reasonable doubt," as defined by the law and used in these instructions, is that state of the case which, after a careful comparison and consideration of all the evidence in the case leaves the minds of the jury in that condition that they cannot feel an abiding conviction, to a moral certainty, of the truth of the charge.

The term “reasonable doubt” does not mean any doubt; but such doubt must be actual and substantial, as contradistinguished from mere vague apprehension, and must arise out of the evidence, or from a want of evidence, or from both such sources.

A reasonable doubt is not a mere whim, but is such a doubt as arises from a careful and honest consideration of all the evidence or lack of evidence, in the case; and the evidence is sufficient to remove all reasonable doubt when it convinces the judgment of ordinarily prudent men of the truth of a proposition with such force that they would act upon the conviction without hesitation in their own most important affairs of life.

Proof beyond a reasonable doubt does not mean proof beyond all doubt.

VI.

The defendant has interposed a plea of not guilty of the crimes charged in the indictment, and such plea denies each and every essential element of each of said crimes, and places the burden upon the Government of proving each such element of each of said crimes, beyond a reasonable doubt, before you can find the defendant guilty of any one count or counts. [603]

VII.

You should not consider any evidence sought to be introduced but excluded by the Court, nor should you consider any evidence that has been stricken by the Court from the record nor should you take into account, in making up your verdict, any knowledge

or information known to you not derived from the evidence given upon the witness-stand.

VIII.

The jury are instructed that they are the sole judges of all questions of fact in this case, and they should determine the same from the evidence in the case. But your power in this connection is not arbitrary, but is to be exercised by you with legal discretion and in subordination to the rules of evidence laid down in these instructions.

IX.

In considering the evidence in this case, you are not bound to find a verdict in conformity with the declarations or testimony of any number of witnesses, when their evidence does not produce conviction in your minds, against a lesser number of witnesses, or other evidence, which is satisfying to your minds.

X.

In determining the credit you will give to a witness and the weight and value you will attach to his testimony, you should take into account the conduct and appearance of the witness upon the stand; the interest he has, if any, in the result of the trial; the motive he has in testifying; if any is shown; his relation to or feeling for or against any of the parties to the case; the probability or improbability of such witness' statements; the opportunity he had to observe and to be informed as to matters respecting which he gave testimony before you; and the inclination he evinced, in your judgment, to speak the truth or otherwise as to matters within the knowl-

edge of such witness. It is your duty to give to the testimony of each and all of the witnesses appearing before you such credit as you consider the same justly entitled to receive. [604]

And in this connection you are instructed that evidence is to be estimated not only by its intrinsic weight, but also according to the evidence which it is within the power of the one side to produce, and of the other to contradict; and, therefore, if the weaker and less satisfactory evidence is offered, when it appears that the stronger and more satisfactory evidence is within the power of the party offering the same, the evidence so offered should be viewed with distrust.

XI.

You are instructed that if you find any witness has wilfully testified falsely in one part of his testimony in this case, you may distrust any part, or all, of the testimony of such witness. And, if you believe from the evidence that any witness appearing before you in this case has wilfully testified falsely, you are at liberty to reject the entire testimony of such witness; but you are not bound to reject the entire testimony of a witness because he has testified falsely in some part of his testimony; you should reject the false part, and should give to the other parts such weight as you may deem they are justly entitled to receive.

You should not fail to weigh and consider fairly and give proper effect to all testimony which you consider truthful.

XII.

You are instructed that certain testimony has been admitted in this case for specified and limited purposes, which at the time of its reception by the Court was so limited.

You will bear in mind and confine yourself, in the consideration of such testimony, to the limited purpose for which it was so admitted. A particular application of this instruction is directed to the evidence of the witness J. H. Miller wherein he testified to statements made to him by Laura Herrington prior to the investigation testified to by him, said testimony having been admitted for limited purposes as stated to the jury by the Court at the time of its reception. [605]

XIII.

You are instructed that a witness may be impeached either by proof of contradictory statements, or statements materially different and at variance with what he may have testified to upon the witness stand. And if you believe that any witness in this case has been successfully impeached, you may disregard the testimony of such witness unless his testimony is corroborated by other credible evidence in the case.

And it is for you to say whether or not you will believe the witness sought to be impeached, or the witness brought to impeach him, as the law makes it incumbent upon the jury to determine the credibility of all the witnesses appearing and testifying before them in the trial of the case.

XIV.

You are further instructed that the question of punishment is reserved for the Court, and that the jury have nothing to do with that branch of the case, and are not to consider the same.

It is for you to determine solely whether or not the defendant is guilty of the respective crimes charged in the indictment. The matter of the form and severity of the punishment is to be left to the discretion of the Court.

XV.

You are instructed that corroborating evidence must be such as tends to connect the accused with an alleged offense, and, as distinguished from evidence of the act itself, is additional evidence of a different character to the same point. It means to strengthen, to add weight or credibility to a thing.

XVI.

There is some evidence in this case as to oral admissions and statements out of court of some of the parties to the case, who have appeared as witnesses before you and testified to the same.

I charge you that, owing to the infirmity of the human mind [606] and the inability of witnesses to repeat the exact language used by persons alleged to have made such admissions and statements, and to understand it correctly and repeat it with all its intended meaning, you are to view the evidence as to such oral admissions and statements with caution, but if you should find and believe that such oral admissions and statements were actually made by the person or persons alleged to have made them, you

should consider them as candidly and fairly as other evidence in the case and give them weight accordingly.

XVII.

You are instructed that there are two general classes of evidence, direct and circumstantial. Evidence as to the existence of the main fact in issue, is direct evidence, while circumstantial evidence relates to the existence of facts which raise a logical inference as to the existence of the fact in issue.

You are instructed that circumstantial evidence is legal and competent evidence, and if it be of such a character as to exclude every other reasonable hypothesis than that of the defendant's guilt, then it is sufficient to warrant a conviction. In other words, such evidence is sufficient to warrant a conviction when it convinces the minds of the jury of the guilt of the accused beyond a reasonable doubt.

It is not necessary to prove the defendant's guilt by the testimony of eye-witnesses who have seen the offense committed, but such guilt may be established by facts and circumstances from which it may be reasonably and satisfactorily inferred, provided such facts and circumstances establish such guilt beyond all reasonable doubt.

Circumstantial evidence is to be regarded by the jury in all cases where it is offered. It is sometimes quite as conclusive in its convincing power as the direct and positive testimony of eye-witnesses; and, when it is so strong and satisfactory, the jury should so consider it, neither enlarging nor belittling its force. But in order to warrant a conviction on circumstantial [607] evidence, the circumstances

taken together should be of a conclusive nature and tendency, leading on the whole to a satisfactory conclusion and producing in effect a reasonable and moral certainty that the accused and no one else committed the offense charged. And it is an invariable rule of law that to warrant a conviction upon circumstantial evidence, such facts and circumstances *much* be shown as are consistent with the guilt of the person charged, and as cannot upon any reasonable theory be true and the person charged be innocent.

XVIII.

You are instructed that a person charged with the commission of a crime shall, at his own request, but not otherwise, be deemed a competent witness in his own behalf, the credit to be given to his testimony being left entirely to the jury, under the instructions of the Court. And you are instructed that in this case the credit to be given to the testimony of the defendant, W. H. Wooldridge, is left solely to you, and you should give it the same fair and candid consideration you do to the testimony of other witnesses in the case, but you have a right to take into consideration the interest of the defendant in the result of this trial, as affecting his credibility.

XIX.

You are instructed that whoever has carnal knowledge of a female person forcibly and against her will, or, being sixteen years of age, carnally knows and abuses a female person under sixteen years of age, with her consent, is guilty of rape.

XX.

You are instructed that, if you find from the evi-

dence in this case, beyond a reasonable doubt, that the defendant had sexual intercourse with the witness Laura Herrington, and that at the time of such sexual intercourse the said Laura Herrington was less than sixteen years of age and the defendant was more than sixteen years of age, you should find the defendant guilty as charged, on the first count of the indictment.
[608]

XXI.

You are instructed that the law presumes a female under the age of sixteen years to be incapable of giving consent to the act of sexual intercourse, and therefore, if you find from the evidence beyond a reasonable doubt, that the defendant W. H. Wooldrige, being then and there more than sixteen years of age, had sexual intercourse with the said Laura Herrington, she being at the time less than sixteen years of age, you should find the defendant guilty as charged in the first count of the indictment, even though the said Laura Herrington consented to the copulation.

XXII.

You are further instructed that it is the policy of our law, as expressed in the statute, that any female under the age of sixteen years shall be incapable of consenting to the act of sexual intercourse, and that anyone committing the act with a girl within that age shall be guilty of rape, notwithstanding he obtained her consent thereto; and whether the girl in fact consented or resisted is immaterial in this case.

In the present case, neither the element of force nor the question of consent has any application.

The witness Laura Herrington could not consent, and the law resists for her.

XXIII.

The government would not be required to show the age of Laura Herrington by a family record or any instrument; such proof may be made by oral testimony of witnesses, and said Laura Herrington is a competent witness as to her age, and such testimony may be based upon information with respect thereto, if any she may have from her parents.

XXIV.

You are instructed that it is incumbent upon the prosecution to prove that the crimes charged in the indictment were committed within the Territory of Alaska; but it is not necessary that the offense or either of them be proved to have been committed on the particular day [609] alleged in the indictment; it is sufficient if the proof shows the commission of the offenses at any time within three years prior to the 18th day of February, 1916, the date of the finding of the indictment against the defendant.

XXV.

If you believe from the evidence in this case, beyond a reasonable doubt, that the defendant W. H. Wooldridge, in the town of Fairbanks, Alaska, did as charged in the first count of the indictment, have carnal knowledge of Laura Herrington and did penetrate the female organ of said Laura Herrington, with his male member or penis, and that said Laura Herrington was then and there a female under the age of sixteen years, and was not then and there the wife of the defendant W. H. Wooldridge, and said

W. H. Wooldridge was over the age of sixteen years, you will find the defendant guilty under the first count of the indictment.

XXVI.

Evidence has been admitted tending to show that the witness Laura Herrington informed Ed Hall, shortly after the commission of the crime charged in the first count of the indictment, that she had been ravished by the defendant. Such information, if any, would not be evidence corroborating the testimony of said witness tending to connect the defendant with the commission of the offense of rape, if such offense was committed. The evidence of such information was admitted as tending to confirm or corroborate the truth of her testimony. The law is, that a failure by one who claims the crime of rape to have been committed upon her to immediately inform, is looked upon as a suspicious circumstance that her story is a fabrication. Hence, the testimony of such information was admitted for the purpose of testing the accuracy and veracity of the witness Laura Herrington, and for no other purpose.

XXVII.

The jury is instructed that the witness Laura Herrington is in law a competent witness; but the credibility of her testimony [610] and how far she is to be believed, is to be determined by the jury, and is more or less credible according to the circumstances of facts that concur in that testimony.

XXVIII.

The intent to have sexual intercourse where the female is under the age of consent, is an essential

element in the crime, and must be proved beyond a reasonable doubt; and this may be done by proof of any facts or circumstances tending to show such intent.

XXIX.

You are instructed that in the case of rape it is not essential that the one upon whom the rape is alleged to have been committed should be corroborated by the testimony of other witnesses as to the particular act constituting the offense; and if the jury believe from the testimony of the witness Laura Herrington, and the corroborating circumstances and facts testified to by other witnesses, that the defendant did commit the crime as charged, the law would not require that the witness Laura Herrington should be corroborated by other witnesses as to what transpired at the immediate time and place when it is alleged the crime was committed.

XXX.

The charge of rape against a person is easy to make, difficult to prove and more difficult to disprove, and in considering a case of this kind, it is the duty of the jury to carefully and deliberately consider, compare and weigh all the testimony, facts and circumstances bearing on the acts complained of, and the utmost care, intelligence and freedom from bias should be exercised by the jury in the consideration thereof. The time and place of the alleged acts; relation of the defendant to the said Laura Herrington upon whom the rape is alleged to have been made in the first count of the indictment; her age and intelligence; and physical development; his influence

and power over her, if any; her condition thereafter; the length of time after the alleged transaction before information was given thereof by her; the place where said acts are alleged to have been committed; the corroborating evidence [611] if any; what was said by the defendant, if anything, to the said Laura Herrington at the time of the alleged acts; what, if anything, she saw and heard at the time; together with all the other facts and circumstances of the case, as the same have been developed by and established by the proofs in the case, should be considered by you while you are considering whether the defendant is or is not guilty of the crime charged in the first count of the indictment.

XXXI.

You are instructed that Section 2073 of the Compiled laws of Alaska provides as follows:

“That if any person attempts to commit any crime, and in such attempt does any act toward the commission of such crime, but fails, or is prevented or intercepted in the perpetration thereof, such person, when no other provision is made by law for the punishment of such attempt, upon conviction thereof, shall be punished as follows:

First: If the crime so attempted be punishable by imprisonment in the penitentiary or county (Federal) jail, the punishment for the attempt shall be by like imprisonment, as the case may be, for the term not more than half the longest period prescribed as a punishment for such crime.

Second: If the crime so attempted be punishable by fine, the punishment for the attempt shall be by fine not more than half the amount of the largest fine prescribed as a punishment for such crime."

XXXII.

You are instructed that with reference to the second count of the indictment, an attempt to commit a crime is composed of two elements. First, the intent to commit it, and second, a direct ineffectual act done towards its commission. The act must reach far enough toward the accomplishment of the desired results to amount to the commencement of its consummation. While it need not be the last proximate act to the consummation of the offense attempted to be perpetrated, it must approach sufficiently near to it to stand either as the first or some subsequent step in a direct movement toward the commission of the offense after the preparations are made.

Applying these principals of law, if you find from the evidence, beyond a reasonable doubt, that at the home of Laura Herrington [612] in Fairbanks, on the evening of February 14th, 1916, (the said Laura Herrington being under the age of sixteen years,) the defendant arranged and agreed with the said Laura Herrington to meet her at the shop of J. P. Rose on Lacey Street, in said town, on the evening of February 15th, 1916, for the purpose of then and there having unlawful and felonious sexual intercourse with her, and that in pursuance of said arrangement, the said Laura Herrington kept her appointment by going to said shop as agreed, and was

there met by the defendant still intending to carry out said arrangement to have unlawful and felonious sexual intercourse with her, and regardless of whether said Laura Herrington would or would not have continued to surrender herself to the complete act of sexual intercourse, you further find, beyond a reasonable doubt, that without any change of purpose or intent on the part of the defendant he was prevented from perpetrating said crime by the intervention of any outside agency, then I instruct you that he is guilty of attempt to commit rape as charged in the second count of the indictment. If, on the other hand, you find from the evidence that the defendant on the 14th day of February, 1916, simply solicited the said Laura Herrington to have unlawful and felonious sexual intercourse with him at the shop of J. P. Rose on the evening of the 15th day of February, 1916, and thereafter made no arrangement, nor attempted to make any arrangement with the said J. P. Rose for the use of said shop for said unlawful and felonious purpose, and entirely abandoned said arrangements with Laura Herrington, then you should acquit the defendant of the charge contained in the second count of the indictment.

XXXIII.

The jury should agree upon a verdict. No juror, from mere pride of opinion hastily formed or expressed, should refuse to agree nor, on the other hand, should he surrender any conscientious views founded on the evidence. It is the duty of each juror to reason with his fellows concerning the facts with an honest desire to arrive at the truth, and with a view

of arriving at a verdict. It should be the [613]
object of all the jury to arrive at a common conclusion, and to that end to deliberate together with calmness.

It is your duty to agree upon a verdict if that be possible without a violation of conscientious convictions.

In compliance with the law, I have prepared four forms of verdict which you will take with you to your jury-room, and, when you shall have unanimously agreed upon a verdict, you will sign, by your foreman, that form upon which you shall have so agreed, and return the same into court as your verdict, and the other forms you will destroy.

The forms are:

1. Guilty on the first count and guilty on the second count of the indictment.

2. Guilty on the first count and not guilty on the second count of the indictment.

3. Not guilty on the first count and guilty on the second count of the indictment.

4. Not guilty on the first count and not guilty on the second count.

I now hand you also the written instructions which I have just read to you, for your guidance, together with the Indictment and the exhibits in the case, all of which you will return into court with your verdict.

Given at Fairbanks, Alaska, March 14th, 1916.

CHARLES E. BUNNELL,

District Judge.

[Indorsements.] [614]

At the conclusion of the reading by the Court of

its written instructions to the jury, the defendant, by his attorneys, did, in the presence of the jury and before they retired to deliberate upon their verdict, take the following exceptions:

Defendant's Exceptions to Instructions of Court to Jury.

The defendant excepts to Instruction Number 12 given and read to the jury, for the reason that it is an abstraction purely, and not directing the jury's attention to the particular evidence referred to, and in nowise aiding them to come to a correct conclusion as to the evidence the effect of which is sought to be limited.

The defendant excepts to Instruction Number 13 as given and read to the jury, as not correctly stating the law attempted to be covered in said instruction.

The defendant excepts to Instruction Number 15 as given and read to the jury, for the reason that it is an abstraction, tends to mislead, and is not a correct statement of the law attempted to be charged.

The defendant excepts to Instruction Number 17 as given and read to the jury, as not a correct statement of the law attempted to be covered in said instruction. [615]

Defendant excepts to Instruction Number 18 as given and read to the jury, as singling the defendant out from all other witnesses in the case, and laying special stress upon the question of his interest in the result of the trial, and as a matter of fact, the instruction should apply to all witnesses in the case if the jury believe they have any interest in the result of the trial.

Defendant excepts to Instruction Number 20 as given and read by the Court, for the reason that the same is not a complete or accurate statement of the law attempted to be covered by said instruction, and not properly covered by other instructions in the case.

Defendant excepts to Instruction Number 21 as given and read to the jury, for the reason that the same is not a correct statement of the law attempted to be charged therein; for the further reason that nowhere else in said instructions are the omissions, constituting a correct statement of the law involved in this construction of the law, supplied.

Defendant excepts to Instruction Number 22 as given and read by the Court, for the reason that the same is not an accurate statement of the law involved and attempted to be charged in said instruction, nor is the error corrected or cured by any correct instruction in the case. [616]

Defendant excepts to Instruction Number 23 as given and read to the jury, for the reason that the same is not a correct statement of the law attempted to be charged in said instruction.

The defendant excepts to Instruction Number 24 as given and read to the jury, for the reason that the same is not a correct statement of the law attempted to be charged in said instruction, and that the defects therein are not supplied by any other instruction.

The defendant excepts to Instruction Number 25 as given and read to the jury, for the reason that the same is not correct instruction of the law attempted

to be set out in said instruction.

The defendant excepts to Instruction Number 26 as given and read to the jury, for the reason that the same is an incorrect statement of the law, misleading; and for the further reason that the jury should have been instructed to totally disregard statements made by the witness Laura Herrington to said Ed Hall, and for the further reason that they are not competent to prove any fact involved in this case.

The defendant excepts to Instruction Number 27 given and read to the jury, for the reason that the same is incomplete, misleading, and not a correct statement of the law attempted to be given in said instruction. [617]

The defendant excepts to Instruction Number 28 given and read by the Court, for the reason that the same is incomplete, misleading, not a correct statement upon the question of intent and the necessary proof required to prove such intent upon the part of the defendant.

The defendant excepts to Instruction Number 29 as given and read by the Court, for the reason that the same is incomplete, misleading, and not a correct statement or an accurate statement of the law of corroboration of a female upon whom a rape is alleged to have been committed.

The defendant excepts to Instruction Number 30 as given and read by the Court, for the reason that the same is an abstraction, and for the further reason that the latter part of said instruction has no application to any facts in this case or to the crimes charged in this case, and is misleading, and tends

to confuse and mislead the jury upon the question of abandonment.

The defendant excepts to Instruction Number 32 as given and read by the Court, for the reason that the same is involved, contradictory in itself, misleading, not applicable to the issues presented by the Indictment; that it is not the law of the case from any standpoint, and the hypothesis upon which it is based fails to collate all the material elements of the charge as a basis for the conclusion of the Court. [618]

The COURT.—All of which exceptions are allowed.

I will change Instruction Number 12, and read the same to the jury.

Gentlemen of the jury: The Court desires to modify or explain—not explain, but to modify Instruction Number 12. The Court will now read to you Instruction Number 12 (reads):

“You are instructed that certain testimony has been admitted in this case for specified and limited purposes which, at the time of its reception by the Court, was so limited. You will bear in mind, and confine yourselves in the consideration of such testimony, to the limited purpose for which it was so admitted.”

That is instruction Number 12 as originally read to you.

Now, in addition to that, the Court has added (reads):

“A particular application of this instruction is directed to the evidence of the witness J. H.

Miller wherein he testified to statements made to him by Laura Herrington prior to the investigation testified to by him; said testimony having been admitted for limited purposes as stated to the jury by the Court at the time of its reception.”

The defendant excepts to Instruction Number 12 as amended by the Court and as read to the jury, for the reason that the same is an abstraction, and is failing to tell the jury or direct them as to what purpose, if at all, the same could be lawfully and legally considered by them; that the Court should have instructed the jury in this connection that all of the evidence of the witness J. H. Miller with reference to any conversation upon the part of Laura Herrington relative to the commission of the offense charged in Court 1 of the indictment herein was hearsay evidence, not competent to be considered by the jury for any purpose, and should have been withdrawn by the instruction of the Court from the consideration of the jury; that if there is any lawful purpose or legal reason why said testimony might or should [619] be considered by the jury, that such specific purpose should be pointed out to the jury, and should not be left to the jury to guess at.

The COURT.—Which exception is allowed.

[620]

The defendant presented to the Court, and requested the Court to give to the jury the following written instructions: [621]

Instructions Requested by Defendant.

No. 708—Cr.

No. 1.

The Court instructs the jury that they are the sole judges of the credibility of any witnesses who testified in this case, and if they believe from the evidence that any witness has testified falsely herein they are at liberty to disbelieve his or her testimony in whole or in part. And if any witness before testifying in this case, has made any statement out of court, concerning any of the material matters, materially different and at variance with what he or she stated on the witness-stand, then this jury are instructed by the Court that these facts tend to impeach either the recollection or the truthfulness of such witness; and the jury should consider these facts in estimating the weight which ought to be given to his or her testimony.

Refused as requested—CHARLES E. BUN-
NELL. [622]

No. 2.

The jury is instructed that evidence is of two classes: direct and positive or indirect, presumptive and circumstantial, and if the evidence in this case discloses that a portion of the evidence is indirect, presumptive and circumstantial, then in the consideration of such indirect, presumptive and circumstantial evidence the jury must be convinced that such circumstances are absolutely incompatible, upon any reasonable hypothesis with the innocence of the defendant and incapable of explanation upon any rea-

sonable hypothesis other than the guilt of the accused and if the jury is not so convinced of the guilt of the defendant from such indirect, presumptive and circumstantial evidence together with the direct and positive evidence, the verdict must be to acquit the defendant.

Covered by instructions given—CHARLES E.
BUNNELL. [623]

No. 3.

The jury is further instructed that the rule of law which clothes every person accused of crime with the presumption of innocence, and imposes upon the government the burden of establishing his guilt beyond a reasonable doubt, is not intended to aid anyone who is in fact guilty of crime to escape, but is a humane provision of law, intended, so far as human agencies can, to guard against the danger of any innocent person being unjustly convicted. By a reasonable doubt is meant that kind of a doubt interposed in the graver transactions of life, after comparison and consideration of the facts and testimony involved, would cause a reasonable and prudent man to hesitate and pause. It follows therefore that after such consideration the jury should acquit defendant unless they can feel an abiding conviction to a moral certainty of the truth of the charge beyond a reasonable doubt.

Covered by instructions given—CHARLES E.
BUNNELL. [624]

No. 4.

The jury is further instructed that the presumption of innocence is not a mere form, to be disregarded

at pleasure, but it is an essential, substantial part of the law of the land and binding on the jury in this case, as in all criminal cases; and it is the duty of the jury to give the defendant in this case the full benefit of this presumption, which clings to him, surrounds, shields and protects him throughout the entire trial of this case, and to acquit the defendant unless the evidence in the case convinces you of his guilt as charged, beyond all reasonable doubt.

Refused as requested.—CHARLES E. BUN-
NELL. [625]

No. 5.

The jury are instructed that, when a man's conduct may be consistently and as reasonably, from the evidence, referred to one of two motives, one criminal and the other innocent, it is your duty to presume that such conduct is actuated by the innocent and not by the criminal.

Refused as requested.—CHARLES E. BUN-
NELL. [626]

No. 6.

The jury is instructed that if the testimony in this case in its weight and effect be such that two conclusions can be reasonably drawn from it, the one favoring the innocence of the defendant, and the other tending to establish his guilt, the law makes it your duty to accept the conclusion tending towards the innocence.

Refused as requested.—CHARLES E. BUN-
NELL. [627]

No. 7.

(The jury is instructed that the witness Laura

Herrington is in law a competent witness; but the credibility of her testimony and how far she is to be believed, is to be determined by the jury, and is more or less credible according to the circumstances of facts that concur in that testimony.)

Given.

(It is one thing whether the testimony of a witness be heard; another thing whether that testimony be believed when it is heard.)

Refused.

It is true that the accusation of rape is one easily to be made and hard to be proved, and harder to be defended by the party accused, though ever so innocent.)

Covered.—CHARLES E. BUNNELL.

[628]

No. 8.

The jury is instructed that the testimony of the witness Laura Herrington should be cautiously scrutinized, and the jury should diligently guard themselves from the undue influence of the sympathy in her behalf which her testimony is apt to excite. If she concealed or imparted information of the offense; the person to whom such information was imparted, the conditions under which it was so imparted; as well as the place of the commission of the offense charged, the surroundings, the time, the season, the condition of weather, these and other circumstances should be considered by the jury; also the manner in which she testifies, the consistency of her testimony, its probability or improbability and her de-

meanor on the witness-stand should be fairly and carefully viewed by the jury, before the jury is satisfied with the truth of her evidence.

Refused except as covered in instructions given.—CHARLES E. BUNNELL.

[629]

No. 9.

The first count of the indictment charges the defendant with the crime of statutory rape alleged to have been committed by him in a vacant cabin in Fairbanks, on the evening of December 23, 1914, by carnally knowing one Laura Herrington, she then and there being a female person under the age of sixteen years and he being over that age. The Government upon this charge relies for a conviction on the testimony of the said Laura Herrington, and no other witness was called by the Government to testify directly to the time and place or circumstances of the alleged offense.

You are instructed that where, as in this case, to prove the charge contained in the said first count, the Government relies upon the uncorroborated testimony of the said female person unsustained by other evidence, or by facts or circumstances corroborating it, you should view her testimony with great caution.

You are further instructed that in considering her testimony, you may take into consideration the facts and circumstances surrounding the place where the alleged offense is charged to have been committed—all the facts and circumstances at the time and immediately after the alleged offense was committed—

in determining the weight of her testimony, and the reasonableness thereof, as showing to your minds the credit to be given to the same.

Refused.—CHARLES E. BUNNELL.

[630]

No. 10.

In the second count in the indictment the defendant is charged with an attempt to commit the crime of statutory rape, by carnally knowing and abusing one Laura Herrington, she being at the time under the age of sixteen years and he being over that age.

An attempt to commit a crime is an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and possessing, except for failure to consummate, all the elements of the substantive crime. There is a class of acts which may be done in pursuance of an intention to commit a crime, but not in legal sense, a part of it, and do not constitute an indictable attempt; such as the purchase of a gun with the design of committing murder, or the procuring of poison with the same intent. These and like acts are considered in the nature of mere preliminary preparation, and not as acts towards the consummation of the crime. To constitute an indictable attempt to commit the crime of statutory rape, something more than mere intention is necessary and even more than solicitation.

It follows from these principles of law, that if you find from the evidence, beyond a reasonable doubt, that at the house of said Laura Herrington, in Fairbanks, on the evening of February 14, 1916, the de-

fendant arranged and agreed with said girl (she then being under sixteen years [631] of age and he being over that age), to meet her at the shop of J. P. Rose, on Lacey Street, in said town on the evening of February 15, 1916, for the purpose of then and there having carnal intercourse with her; that on the evening of said February 15, 1916, defendant did go to said shop, and after getting there engaged in conversation with said Rose who was present in said shop, but if you further find from the evidence or entertain a reasonable doubt of the truth thereof that, while in said shop on said evening, defendant committed no act in furtherance of said arrangement with Laura Herrington, but on the contrary for some or any reason, abandoned such arrangement and purpose; that after such abandonment of arrangement and purpose the said Laura Herrington came to the shop of said Rose pursuant to said arrangement, but the defendant did and said nothing to her in furtherance of such previous agreement at her home, then I charge you that he is not guilty of an attempt to commit rape as charged in said second count, and you should acquit him of such charge of attempt.

The defendant denies that he made any arrangement or had any agreement at any time with said Laura Herrington at her home, or at any other place, to have carnal intercourse, with her on the evening of February 15, 1916, or at any other time, at the shop of J. P. Rose, on Lacey Street, in [632] Fairbanks, or at any other place. If you believe from all the evidence in the case, both direct

and circumstantial, that such denial is true, or entertain a reasonable doubt of its truth, then you must acquit of the charge of attempt contained in said second count.

Refused as requested.—CHARLES E. BUNNELL. [633]

No. 11.

If you find from the evidence that the said Laura Herrington at and before the time she gave her testimony before you, was a person of bad morals in the matter of chastity and was at such times unchaste, that fact of itself would not mean that the crime of statutory rape and the attempt to commit such crime upon her, with her consent, could not be effected. Such evidence could only be considered by you as effecting her credibility as a witness.

Refused.—CHARLES E. BUNNELL.

[Indorsement.] [634]

The defendant, in the presence of the jury and before they retired to deliberate upon their verdict, took the following exceptions:

The defendant excepts to the ruling of the Court refusing to give and read to the jury Instructions from Number 1 to 11 requested by the defendant, for the reason that the same are correct statements of law as to the points covered by said instructions, and no similar, proper or adequate statements of the law have been given elsewhere by the Court in its instructions as given and read to the jury.

Which exception is allowed by the Court. [635]

And now in furtherance of justice, and that right

may be done, the defendant presents the foregoing as his Bill of Exceptions in this case, and prays that the same may be settled and allowed and signed and certified by the Judge of this Court in the manner provided by law.

T. A. MARQUAM,
BION A. DODGE,
Attorneys for Defendant,
Fairbanks, Alaska.

Due service of the above proposed Bill of Exceptions is hereby admitted this eighth day of May, 1916.

R. F. ROTH,
United States District Attorney. [636]
[Title.]

**Order Approving, Allowing and Settling Bill of
Exceptions.**

BE IT REMEMBERED: That upon this the 15th day of May, 1916, the above-named defendant duly presented the foregoing bill of exceptions for settlement, which said proposed bill of exceptions was served and filed within the time allowed by law by the orders of this Court, which said bill of exceptions consists of the foregoing typewritten pages of the proceedings and testimony of the witnesses given on behalf of the plaintiff and defendant as well as the exhibits and documentary evidence introduced on the trial of said cause and the instructions of the Court and defendant's exceptions thereto and the instructions proposed by the defendant with the denial of the Court to give the same and the exceptions thereto by defendant.

The foregoing constitutes a full and true report of all the proceedings had upon the trial of said cause and of the objections and exceptions made and taken during said trial and the rulings of the Court thereon.

And it appearing to the Court from an examination of said bill of exceptions that the same contains all the evidence, testimony and exhibits introduced and given upon the trial of said cause as well as the proceedings therein not of record, and is in all respects true and correct. [637]

Now, therefore, on motion, it is hereby ordered that the foregoing typewritten pages be and the same is hereby approved, allowed and settled as the bill of exceptions in the above-entitled cause and made a part of the record herein.

It is further ordered and adjudged that the foregoing bill of exceptions constitutes all of the evidence, testimony, exhibits and proceedings had in the above-entitled cause not appearing of record, and that the same is in all respects full, true and correct, and has been filed and presented within the time allowed by law and the orders of this Court.

Done at Fairbanks, Alaska, this 15th day of May, 1916.

CHARLES E. BUNNELL,
Judge of the District Court, Territory of Alaska,
Fourth Division.

Entered in Court Journal No. 13, page 562.

[Indorsement.] [638]

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. May 15, 1916. J. E. Clark,

Clerk. By Sidney Stewart, Deputy. Refiled in the District Court, Territory of Alaska, 4th Div. May 15, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [639]

[Title.]

Petition for Writ of Error and Supersedeas.

W. H. Wooldridge, the defendant in the above-entitled cause, feeling himself aggrieved by the verdict of the jury in said cause, and the judgment pronounced and entered on the eighth day of April, A. D. 1916, comes now by T. A. Marquam and Bion A. Dodge, his attorneys, and complains that in the record and proceedings had in said cause, and also in the rendition of the said verdict and judgment in said above-entitled cause in said District Court for the Territory of Alaska, Fourth Judicial Division, thereof, at the March A. D. 1916 term thereof, manifest error has happened to the great damage of said defendant, and petitions said Court for an order allowing said defendant to prosecute a writ of error to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security and bond which the defendant shall give and furnish upon said writ of error as a supersedeas, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

WHEREFORE said defendant prays for the allowance of a writ of error, and for an order fixing the amount of security by bond for a stay of proceedings and supersedeas in said cause, and for such other orders and process as may cause the same to be corrected by [640] the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 11th day of April, A. D. 1916.

T. A. MARQUAM,
BION A. DODGE,

Attorneys for Defendant.

Allowed.

CHARLES E. BUNNELL,
District Judge.

Received a copy hereof this 11th day of April, 1916.

R. F. ROTH,
Dist. Atty.

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America vs. W. H. Wooldridge. Petition for Writ of Error and Supersedeas. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 11, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [641]

[Title.]

Assignment of Errors.

Comes now W. H. Wooldridge, the plaintiff in error, and files the following Assignment of Errors upon which he will rely upon his prosecution of the

Writ of Error in the above-entitled cause:

I.

The Court erred in overruling defendant's objection to the introduction of any testimony whatever under the indictment and the two counts thereof, for the reason and upon the grounds that the statement of facts set forth therein (count two) do not constitute a crime; excepted to by defendant.

II.

The Court erred in allowing the testimony of Laura Herrington a witness for the prosecution, to go to the jury during the trial of said cause over the objection of defendant's counsel, to the effect that she had a conversation with Ed Hall (a witness) and told Ed Hall she had been out that night with Wooldridge, and that Wooldridge had given her two dollars and a half and owed her a dollar more, all of which was duly excepted to by defendant.

III.

The Court erred in allowing the testimony of said witness Laura Herrington to go before the jury during said trial over the objection of defendant's counsel, to the effect that two or three days after her alleged meeting with Wooldridge, she met her sister Catherine on the street one day and "had a talk with her about the [642] affair that occurred between her and Wooldridge," and "I showed her the money"; duly excepted to by defendant.

IV.

The Court erred in admitting the testimony of Ed Hall, a witness for the prosecution, before the jury during said trial over the objections of defend-

ant's counsel, to the effect that he met Laura Herrington at Morency's home two or three days before Christmas and "she showed me two dollars and a half which she said she got from Wooldridge and would get a dollar more," which was for going to a cabin with Wooldridge who had done something to her; duly excepted to by defendant.

V.

The Court erred in admitting the testimony of George Berg, a witness for the prosecution before the jury during said trial, over the objections of defendant's counsel and motion to strike same as to what was said and done in Rose's shop February 15, 1916, about 8 o'clock P. M., the same being the conclusions of witness from what he afterwards heard and not what he heard or witnessed, the testimony showing he (Berg) admitted he could not hear what was said "only a word now and then"; excepted to by defendant.

VI.

The Court erred in admitting the testimony of said witness George Berg before the jury at said trial over the objection of defendant's counsel, to the effect "Some time in the fore part of February I was informed I was to undertake the investigation of Wooldridge and learn whether or not Laura Herrington was telling the truth," and testimony of like and similar character, exceptions by defendant.

VII.

The Court erred in allowing the testimony of J. H. Miller, a deputy marshal, a witness for the Government, to go before the jury at said trial over

the objections of defendant's counsel, to the effect that Roth, the United States Attorney, first apprised witness of facts out of which the indictment grew, and that Roth requested witness to get Laura Herrington and her father and bring them to Roth's [643] office, and witness sent Berg out and he got them, brought them up and had a conversation regarding another case of a similar nature, the Bobby Jones case, then Roth or I asked her (Laura Herrington) if anyone else had ever bothered her and she stated Wooldridge had, then I asked her if Wooldridge had ever bothered her or attempted a thing like that since, and she said to me that Wooldridge had many times, that he had bothered her many times since that time. I told her if he ever bothered her again and tried to make a date with her to go ahead and make a date with him and then let me know about it, and she said she would do so. My idea was to get them together and determine from their conversation whether the girl was telling the truth. The next I heard was when her father, George Herrington, came to me February 14, 1916, and told me his girl had made a date that evening with Wooldridge; then I went down and looked over the house to see if I could put men in there, asked Berg to get a man. I got one and went down and prepared the three men and the house. Berg returned that nothing came of it, so I wanted to go down there and find out from the girl why the arrangement had not been carried out. Next morning George Herrington came to the office and told me, after Berg and I had left, Wooldridge came to the

house and she had made a date with him at Rose's bicycle shop for 8 o'clock next evening. I went up and took a look around Rose's shop to see if there were a chance to place anybody there in shape to overhear a conversation between these people. I found a place through McDermott's store. Then I called my deputies and told them of my plan, told Frank Hall, a deputy, to get the keys of Judge Pratt's office, told McMullen, another deputy, to go with Hall. I told Deputy Berg and Deputy Wood to place themselves by a door where they could see and listen, and I stayed outside and met the girl and her father. I told the girl to talk "about the time you claim Wooldridge had sexual intercourse with you," and she said she would, "And I also told her, if anything comes up" to say "be careful," or some such words, and there would be something that would cause a stop, but to hold a conversation with him, to the admission of which testimony, and the whole, and every part thereof, [644] objection was repeatedly made by defendant's counsel, overruled and excepted to. Motion was made by defendant's counsel to strike same and every part thereof, and denied by the Court, which exception was duly taken.

VIII.

The Court erred in allowing the testimony of said J. H. Miller, over the objection of defendant's counsel to the effect that "Berg and I started to take the girl home; we got down a little ways and we concluded if we wanted to get the truth, we had better question Mr. Rose before he and Wooldridge

talked together. I went to office and sent Deputy McMullen after Mr. Rose and I asked him, took a pad of paper, I had the other boys come in. I asked him some questions, he volunteered some '*questions*' Berg spoke to him about parts of his statement, and I wrote them all down, repeated it, handed him the paper and told him to read it. He hadn't his glasses and I told Deputy Hall to read it. Rose signed it and swore to it. (Paper, Plaintiff's Exhibit 1, shown witness)," and all testimony of like and similar nature, which was objected to by defendant's counsel, who also moved to strike such testimony of Miller, and every part and portion thereof, which motion was denied and exception taken.

IX.

The Court erred in allowing the testimony of J. P. Rose, a witness for the prosecution upon said trial, upon the objections of defendant's counsel, as to what had been said and had occurred in his place, as he had stated same to Chief Deputy Miller and the other deputies in the absence of the defendant.

X.

The Court erred in allowing the testimony of witness George Berg for the prosecution upon said trial, over the objections of defendant's counsel, as to what Berg said what Rose had said, and what Miller and Hall had said, in the marshal's office relative to what had occurred in Rose's place of business that evening in the absence of defendant, and as to what Berg himself said upon the same subject to Rose and others during the absence of defendant. [645]

XI.

The Court erred in permitting the testimony of P. McMullen, a witness for the prosecution upon said trial, over the objections of defendant's counsel, as to the conversation had by and with witness Miller, Berg, Rose and others in the Marshal's office in the absence of defendant.

XII.

The Court erred in permitting the testimony of J. P. Rose, a witness for the prosecution upon said trial, over the objections of defendant's counsel, as to his testimony before the grand jury in the absence of defendant.

XIII.

The Court erred in permitting the testimony of J. P. Norris, R. M. Crawford, H. N. Shead, William Pendergraft and Tom Utigaard, members of the grand jury and witnesses for the prosecution upon said trial, over the objections of defendant's counsel, to the effect that the witness Rose was sworn before said grand jury, and that Government counsel read witnesses purported extracts from the purported signed statements of witness Rose and asked them if that was what Rose testified to before the grand jury, to which questions the said witnesses, and each of them, answered "Yes," and like and similar questions, all of which were duly excepted to by defendant's counsel, overruled, exceptions taken, moved to be stricken, denied, and exceptions taken.

XIV.

The Court erred in permitting the introduction in

evidence before said jury at said trial, over the objections of defendant's counsel, of the alleged signed statement of J. P. Rose, marked Plaintiff's Exhibit One (1).

XV.

The Court erred in permitting the testimony of Laura Herrington, a witness for the prosecution, to go before the jury at said trial over the objection of defendant's counsel, upon her *redirect* examination, to the effect: Q. "Did you lay down on the coat? A. "Yes." Q. "Were your legs apart?" A. "Yes." [646] Q. "What did defendant do to you?" A. "I can't explain it." Q. "Did you have sexual intercourse?" A. "Yes."

XV.

The Court erred in refusing to permit Bion A. Dodge to testify on behalf of the defendant at said trial, upon objections by Government counsel, relative to the witness, Mrs. George Herrington, having told him that Wooldridge had loaned her a dollar, which testimony was excluded upon the grounds that a proper foundation had not been laid.

XVI.

The Court erred in refusing to permit J. E. Clark, Clerk of the Court, a witness called on behalf of the defendant, to testify at said trial, over the objection of Government counsel, in answer to the following question propounded by defendant's counsel: "Have you among your records a record in your office of an indictment against J. P. Rose for rape"?

XVII.

The Court erred in denying the motion made by the defendant's counsel, upon the close of the testimony of the Government, that the Court direct the jury to return a verdict of not guilty upon the second count in the indictment, upon the grounds, in substance: That the evidence was insufficient to justify a verdict of guilty and that it was against the law, and that upon motion for a new trial the Court should set a verdict of guilty aside, and that the testimony fails to establish the commission of the offense charged, or any offense; there was no intent, no overt act, and whatever was done amounted at the most to but solicitation, and the Alaska statute making an attempt a substantive offense, solicitation is not an attempt; that the testimony did not disclose any act tending to prove the commencement of the consummation of any attempt whatever, and also that the defendant was not prevented or intercepted by any person or persons whomsoever or cause whatsoever and also that said second count failed to charge any offense under the Alaska statute.

XVIII.

The Court erred in denying the motion made by the defendant [647] upon the close of the testimony of the Government, in substance, that the Government then and there elect upon which count in said indictment the Government would stand, and upon which count it would elect to have a verdict found, which motion was denied and exception taken by defendant's counsel.

XIX.

The Court erred in denying the renewal of the motion of defendant to instruct the jury to find a verdict of not guilty upon the conclusion of all of the testimony, substantially upon the same ground as stated upon the previous motion, to the denial of which motion defendant excepted.

XX.

The Court erred in refusing to give to the jury the following instruction during the course of the charge to the jury:

INSTRUCTION NO. 1.

The Court instructs the jury that they are the sole judges of the credibility of any witnesses who testified in this case, and if they believe from the evidence that any witness has testified falsely herein, they are at liberty to disbelieve his or her testimony in whole or in part. And if any witness before testifying in this case, has made any statement out of court, concerning any of the material matters, materially different and at variance with what he or she stated on the witness-stand, then this jury are instructed by the Court that these facts tend to impeach either the recollection or the truthfulness of such witness; and the jury should consider these facts in estimating the weight which ought to be given to his or her testimony.

XXI.

The said Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 2.

The jury is instructed that evidence is of two

classes; direct and positive, presumptive and circumstantial, and if the evidence in this case discloses that a portion of the evidence is indirect, presumptive [648] and circumstantial, then in the consideration of such indirect, presumptive and circumstantial evidence the jury must be convinced that such circumstances are absolutely incompatible, upon any reasonable hypothesis with the innocence of the defendant and incapable of explanation upon any reasonable hypothesis other than the guilt of the accused and if the jury is not so convinced of the guilt of the defendant from such indirect, presumptive and circumstantial evidence together with the direct and positive evidence, the verdict must be to acquit the defendant.

XXII.

The Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 3.

The jury is further instructed that the rule of law which clothes every person accused of crime with the presumption of innocence, and imposes upon the Government the burden of establishing his guilt beyond a reasonable doubt, is not intended to aid anyone who is in fact guilty of crime to escape, but is a humane provision of law, intended, so far as human agencies can, to guard against the danger of any innocent person being unjustly convicted. By a reasonable doubt is meant that kind of a doubt interposed in the graver transactions of life, after comparison and consideration of the facts and testimony involved, would cause a reasonable and pru-

dent man to hesitate and pause. It follows, therefore, that after such consideration the jury should acquit defendant unless they can feel an abiding conviction to a moral certainty of the truth of the charge beyond a reasonable doubt.

XXIII.

The said Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 4.

The jury is further instructed that the presumption of innocence is not a mere form, to be disregarded at pleasure, but it is an [649] essential substantial part of the law of the land and binding on the jury in this case, as in all criminal cases; and it is the duty of the jury to give the defendant in this case the full benefit of this presumption which clings to him, surrounds, shields and protects him throughout the entire trial of this case, and to acquit the defendant unless the evidence in the case convinces you of his guilt as charged, beyond all reasonable doubt.

XXIV.

The Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 6.

The jury is instructed that if the testimony in this case in its weight and effect be such that two conclusions can be reasonably drawn from it, the one favoring the innocence of the defendant, and the other tending to establish his guilt, the law makes it your duty to accept the conclusion tending towards the innocence.

XXV.

The Court erred in refusing to give to the jury the following instructions:

INSTRUCTION NO. 7.

The jury is instructed that the witness Laura Herrington is in law a competent witness; but the credibility of her testimony and how far she is to be believed, is to be determined by the jury, and is more or less credible according to the circumstances of fact that concur in that testimony. It is one thing whether the testimony of a witness be heard; another thing whether that testimony be believed when it is heard. It is true that the accusation of rape is one easily to be made and hard to be proved, and harder to be defended by the party accused, though ever so innocent.

XXVI.

The Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 8.

The jury is instructed that the testimony of the witness [650] Laura Herrington should be cautiously scrutinized, and the jury should diligently guard themselves from the undue influence of the sympathy in her behalf which her testimony is apt to incite. If she concealed or imparted information of the offense, the person to whom such information was imparted, as well as the place of the commission of the offense charged, the surroundings, the time, the season, the condition of weather, these and other circumstances should be considered by the jury; also

the manner in which she testifies, the consistency of her testimony, its probability or improbability and her demeanor on the witness-stand should be fairly and carefully viewed by the jury, before the jury is satisfied with the truth of her evidence.

XVIII.

The Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 10.

In the second count in the indictment the defendant is charged with an attempt to commit the crime of statutory rape, by carnally knowing and abusing one Laura Herrington, she being at the time under the age of sixteen years and he being over that age.

An attempt to commit a crime is an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and possessing, except for failure to consummate, all the elements of the substantive crime. There is a class of acts which may be done in pursuance of an intention to commit a crime, but not in legal sense, a part of it, and so not constitute an indictable attempt; such as the purchase of a gun with the design of committing murder, or the procuring of poison with the same intent. These and like acts are considered in the nature of mere preliminary preparation, and not as acts towards the consummation of the crime. To institute an indictable attempt to commit the crime of statutory rape, something more than intention is necessary and even more than solicitation.

It follows from these principles of law, that if you find from the evidence, beyond a reasonable doubt, that at the house of said Laura Herrington, in Fairbanks, on the evening of February 14, 1916, [651] the defendant arranged and agreed with said girl (she then being under sixteen years of age and he being over that age), to meet her at the shop of J. P. Rose, on Lacey Street, in said town on the evening of February 15, 1916, for the purpose of then and there having carnal intercourse with her; that on the evening of said February 15, 1916, defendant did go to said shop, and after getting there engaged in conversation with said Rose, who was present in said shop, but if you further find from the evidence or entertain a reasonable doubt of the truth thereof that, while in said shop on said evening, defendant committed no act in furtherance of said arrangement with Laura Herrington, but on the contrary, for some or any reason, abandoned such arrangement and purpose; that after such abandonment of arrangement and purpose the said Laura Herrington came to the shop of said Rose pursuant to said arrangement, but the defendant did and said nothing to her in furtherance of such previous agreement at her home, then I charge you that he is not guilty of an attempt to commit rape as charged in said second count, and you should acquit him of such charge of attempt.

The defendant denies that he made any arrangements or had any agreement at any time with said Laura Herrington at her home, or at any other place, to have carnal intercourse with her on the evening

of February 15, 1916, or at any other times, at the shop of J. P. Rose, on Lacey Street, in Fairbanks, or at any other place. If you believe from all the evidence in this case, both direct and circumstantial, that such denial is true, or entertain a reasonable doubt of its truth, then you must acquit of the charge of attempt contained in said second count.

XXVIII.

The Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 11.

If you find from the evidence that the said Laura Herrington at and before the time she gave her testimony before you, was a person [652] of bad morals in the matter of chastity and was at such time unchaste, that fact of itself would not mean that the crime of statutory rape and the attempt to commit such crime upon her, with her consent, could not be effected. Such evidence could only be considered by you as affecting her credibility as a witness. [653]

29.

The Court erred in giving the following instruction to the jury:

NUMBER 12.

You are instructed that certain testimony has been admitted in this case for specified and limited purposes, which at the time of its reception by the Court was so limited. You will bear in mind and confine yourself, in the consideration of such testimony, to the limited purpose for which it was so admitted.

A particular application of this instruction is directed to the evidence of the witness J. H. Miller,

wherein he testified to statements made to him by Laura Herrington prior to the investigation testified to by him, said testimony having been admitted for limited purposes as stated to the jury by the Court at the time of its reception.

30.

The Court erred in giving the following instruction to the jury:

NUMBER 15.

You are instructed that corroborating evidence must be such as tends to connect the accused with an alleged offense, and, as distinguished from evidence of the act itself, is additional evidence of a different character to the same point. It means to strengthen, to add weight or credibility to a thing. [654]

31.

The Court erred in giving the following instruction to the jury.

NUMBER 17.

You are instructed that there are two general classes of evidence; direct and circumstantial. Evidence as to the existence of the main fact in issue, is direct evidence; while circumstantial evidence relates to the existence of facts which raise a logical inference as to the existence of the fact in issue.

You are instructed that circumstantial evidence is legal and competent evidence, and if it be of such a character as to exclude every other reasonable hypothesis than that of the defendant's guilt, then it is sufficient to warrant a conviction. In other words, such evidence is sufficient to warrant a conviction when it convinces the minds of the jury of

the guilt of the accused beyond a reasonable doubt.

It is not necessary to prove the defendant's guilt by the testimony of eye-witnesses who have seen the offense committed, but such guilt may be established by facts and circumstances from which it may be reasonably and satisfactorily inferred, provided such facts and circumstances establish such guilt beyond all reasonable doubt.

Circumstantial evidence is to be regarded by the jury in all cases where it is offered. It is sometimes quite as conclusive in its convincing power as the direct and positive testimony of eye witnesses; and, when it is strong and satisfactory, the jury should so consider it, neither enlarging nor belittling its force. But in order to warrant a conviction on circumstantial evidence, the circumstances taken together should be of a conclusive nature and tendency, leading on the whole to a satisfactory conclusion, and producing in effect a reasonable and moral certainty that the accused and no one else committed the offense charged. [655]

And it is an invariable rule of law that to warrant a conviction upon circumstantial evidence, such facts and circumstances must be shown as are consistent with the guilt of the person charged, and as cannot upon any reasonable theory be true and the person charged be innocent.

32.

The Court erred in giving the following instruction to the jury:

NUMBER 18.

You are instructed that a person charged with the

commission of a crime shall, at his own request, but not otherwise, be deemed a competent witness in his own behalf, the credit to be given to his testimony being left entirely to the jury, under the instructions of the Court.

And you are instructed that in this case the credit to be given to the testimony of the defendant W. H. Wooldridge is left solely to you, and you should give it the same fair and candid consideration you do to the testimony of other witnesses in the case, but you have a right to take into consideration the interest of the defendant in the result of this trial, as affecting his credibility. [656]

33.

The Court erred in giving the following instruction to the jury:

NUMBER 22.

You are further instructed that it is the policy of our law, as expressed in the statute, that any female under the age of sixteen years shall be incapable of consenting to the act of sexual intercourse, and that anyone committing the act with a girl within that age shall be guilty of rape, notwithstanding he obtained her consent thereto; and whether the girl in fact consented or resisted is immaterial in this case.

In the present case, neither the element of force nor the question of consent has any application.

The witness Laura Herrington could not consent, and the law resists for her.

34.

The Court erred in giving the following instruction to the jury:

NUMBER 26.

Evidence has been admitted tending to show that the witness Laura Herrington informed Ed Hall, shortly after the commission of the crime charged in the first count of the indictment, that she had been ravished by the defendant. Such information, if any, would not be evidence corroborating the testimony of said witness tending to connect the defendant with the commission of the offense of rape, if such offense was committed. The evidence of such information was admitted as tending to confirm or corroborate the truth of her testimony. The law is, that a failure by one, who claims the crime of rape to have been committed upon her, to immediately inform, is looked upon as a suspicious circumstance that her story is a fabrication. Hence, the testimony of such [657] information was admitted for the purpose of testing the accuracy and veracity of the witness Laura Herrington, and for no other purpose.

35.

The Court erred in giving the following instruction to the jury:

NUMBER 28.

The intent to have sexual intercourse, where the female is under the age of consent, is an essential element in the crime, and must be proved beyond a reasonable doubt; and this may be done by proof of any facts or circumstances tending to show such intent.

36.

The Court erred in giving the following instruction to the jury:

NUMBER 32.

You are instructed that with reference to the second count of the indictment, an attempt to commit a crime is composed of two elements; First, the intent to commit it, and second, a direct ineffectual act done towards its commission. The act must reach far enough toward the accomplishment of the desired result to amount to the commencement of the consummation. While it need not be the last proximate act to the commission of the offense attempted to be perpetrated, it must approach sufficiently near to it to stand either as the first or some subsequent step in a direct movement toward [658] the commission of the offense after the preparations are made.

Applying these principles of law, if you find from the evidence, beyond a reasonable doubt, that at the home of Laura Herrington in Fairbanks, on the evening of February 14th, 1916 (the said Laura Herrington being under the age of sixteen years and the defendant being over the age of sixteen years), the defendant arranged and agreed with the said Laura Herrington to meet her at the shop of J. P. Rose, on Lacey Street, in said town, on the evening of February 15th, 1916, for the purpose of then and there having unlawful and felonious sexual intercourse with her, and that in pursuance of said arrangement the said Laura Herrington kept her appointment by going to said shop as agreed, and was there met by the defendant still intending to carry out said arrangement to have unlawful and felonious sexual intercourse with her, and regardless of whether said

Laura Herrington would or would not have continued to surrender herself to the completed act of sexual intercourse, you further find, beyond a reasonable doubt, that without any change of purpose or intent on the part of the defendant he was prevented from perpetrating said crime by the intervention of any outside agency, then I instruct you that he is guilty of attempt to commit rape as charged in the second count of the indictment. If, on the other hand, you find from the evidence that the defendant on the 14th day of February, 1916, simply solicited the said Laura Herrington [659] to have unlawful and felonious sexual intercourse with him at the shop of J. P. Rose on the evening of February 15th, 1916, and thereafter made no arrangement, nor attempted to make any arrangement with the said J. P. Rose for the use of said shop for said unlawful and felonious purpose, and entirely abandoned said arrangement with Laura Herrington, then you should acquit the defendant of the charge contained in the second count of the indictment. [660]

XXXVII.

The Court erred in refusing to grant a new trial to defendant upon his motion duly made therefor.

XXXVIII.

The Court erred in refusing to grant defendant's motion in arrest of judgment.

XXXIX.

The Court erred in pronouncing judgment and sentence upon the defendant.

WHEREFORE the said defendant and plaintiff in error prays that the judgment of the said District

Court for the Fourth Division of the Territory of Alaska be reversed and that said District Court be directed to dismiss the indictment in said cause or to grant a new trial of said cause.

T. A. MARQUAM,

BION A. DODGE,

Attorneys for Defendant and Plaintiff in Error.

Received a copy hereof this 11th day of April, 1916.

R. F. ROTH,

Dist. Atty.

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America vs. W. H. Wooldridge. Assignment of Errors. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 11, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [661]

[Title.]

Minutes of Court—April 11, 1916.

Order Allowing Petition for Writ of Error.

Now, at this time, came R. F. Roth, United States Attorney and in behalf of the Government; came also the defendant in the custody of the United States marshal with his attorney Bion A. Dodge and defendant's petition for Writ of Error having been duly filed in said cause, said petition is hereby allowed by the Court.

CHARLES E. BUNNELL,

District Judge. [662]

[Title.]

**Order Allowing Writ of Error and Fixing Amount of
Supersedeas Bond.**

The defendant, W. H. Wooldridge, having this day duly filed his petition for a writ of error from the record and proceedings had in said cause and also the verdict and judgment therein and thereon, to the United States Circuit Court of Appeals for the Ninth Circuit, together with an Assignment of Errors, within due time, and also praying that an order be made fixing the amount of bond for a supersedeas in said cause, and for such other orders and process as may cause the same to be corrected by the said United States Circuit Court of Appeals for the Ninth Circuit, and said petition having this day been duly allowed;

IT IS ORDERED, that a writ of error be, and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the proceedings and record, verdict, judgment, and sentence herein.

AND IT IS FURTHER ORDERED, that upon the defendant filing with the Clerk of this Court a good and sufficient bond in the sum of Seven Thousand Dollars (\$7,000), to the effect that the said defendant and plaintiff in error shall in all respects abide and perform the orders and judgments of the Appellate Court, the said United States Circuit Court of Appeals for the Ninth Circuit, and if he fail to do so in any particular, the principal, sureties and signers of

said bond will pay to the United States of America the said sum of Seven Thousand Dollars (\$7,000), which bond shall in form and substance [663] comply with the requirements of law and shall be approved by this Court, and when said bond is given and approved, all further proceedings in this court under said record, judgment and sentence be, and they are hereby suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals for the Ninth Circuit, and in the meantime and while the said defendant and plaintiff in error shall be entitled to his discharge from custody and imprisonment.

Dated this 11th day of April, A. D. 1916.

CHARLES E. BUNNELL,

Judge District Court, Fourth Judicial Division, District and Territory of Alaska.

Received a copy hereof this 11th day of April, 1916.

R. F. ROTH,

Dist. Atty.

Entered in Court Journal No. 13, page 505.

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America vs. W. H. Wooldridge. Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond. Filed in the District Court, Territory of Alaska, 4th Div., Apr. 11, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [664]

[Title.]

Bond on Writ of Error.

A judgment having been given on the eighth day of April, A. D. 1916, whereby the defendant herein, W. H. Wooldridge, was adjudged and found guilty of the crime of attempt to commit rape upon the person of one Laura Herrington, and was condemned and sentenced by the Honorable Charles E. Bunnell, the Judge of said court, to imprisonment in the United States Penitentiary at McNeil's Island, in the State of Washington, for the period of six years, and he having appealed and been granted a writ of error from said judgment, and been duly admitted to bail in the sum of seven thousand dollars (\$7,000) ;

We, Edgar Wickersham, property owner, Thomas Keel, merchant, C. P. Gius, miner, all residents of the town of Fairbanks, Alaska, hereby undertake that the above-named W. H. Wooldridge shall in all respects abide and perform the orders and judgment of the Appellate Court, the United States Circuit Court of Appeals for the Ninth Circuit, upon the appeal, or if he fail to do so in any particular, that we will pay to the United States the sum of seven thousand dollars (\$7,000).

IN WITNESS WHEREOF we have hereunto set our hands and seals this 17th day of April, A. D. 1916.

EDGAR WICKERSHAM. (Seal)

THOMAS KEEL. (Seal)

C. P. GIUS. (Seal)

In presence of:

BION A. DODGE.

SIDNEY STEWART. [665]

United States of America,

Territory of Alaska,—ss.

Edgar Wickersham, Thomas Keel, C. P. Gius, each being first duly sworn, upon oath, each for himself says, that he is one of the sureties named in and who subscribed his name to the above and within undertaking; that he is a resident of the Territory of Alaska; that he is not an attorney or counselor at law; marshal, clerk of any court, or other officer of any court, and that he is worth the sum of Five Thousand Dollars (\$5,000), exclusive of property exempt from execution, and over and above all his just debts and liabilities.

EDGAR WICKERSHAM.

THOMAS KEEL.

C. P. GIUS.

Subscribed and sworn to before me this 17th day of April, 1916.

CHARLES E. BUNNELL,

District Judge.

Taken and acknowledged before me this 17th day of April, A. D. 1916.

CHARLES E. BUNNELL,

Judge of the District Court for the Territory of Alaska, Fourth Division.

Approved this 17th day of April, 1916.

CHARLES E. BUNNELL,

District Judge.

[Endorsed]: No. 708—Cr. In the District Court, Territory of Alaska, Fourth Division. United States of America vs. W. H. Wooldridge. Bond on Writ of Error. Filed in the District Court, Territory of Alaska, 4th Div., Apr. 17, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [666]

[Title.]

Minutes of Court—April 19, 1916.

Order Approving Bond.

2:00 P. M.

Now, on April 17th, 1916, R. F. Roth, United States Attorney, appearing in behalf of the Government and Bion A. Dodge appearing in behalf of the defendant the matter of the qualifications of the sureties on the bond of defendant herein came before the Court and the bond of defendant herein was approved by the Court.

CHARLES E. BUNNELL,

District Judge. [667]

[Title.]

Order Directing Release of Defendant.

ORDER TO UNITED STATES MARSHAL.

To the United States Marshal for the Fourth Division of the Territory of Alaska.

W. H. Wooldridge, who is detained by you in execution of a judgment, whereby he is condemned to a term of imprisonment in the United States Penitentiary at McNeil's Island, in the State of Washington, for a period of six years, having appealed from

said judgment and given sufficient bail to abide and perform the judgment of the Appellate Court, the United States Circuit Court of Appeals for the Ninth Circuit, you are commanded forthwith to discharge him from your custody.

Dated this April 17th, 1916.

CHARLES E. BUNNELL,
Judge District Court, Territory of Alaska, Fourth
Division.

Entered in Court Journal No. 13, page 520.

[Endorsed]: No. 708—Cr. In the District Court, Territory of Alaska, Fourth Division. United States of America vs. W. H. Wooldridge. Order to U. S. Marshal, 4th Div. Received Apr. 17, 1916. Fairbanks, Alaska. Marshal's Docket No. 836. Writ Docketed Apr. 17, 1916. Return Docketed Apr. 17, 1916. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 20, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [668]

Writ of Error.

UNITED STATES OF AMERICA,—SS.

The President of the United States of America, to
the Honorable CHARLES E. BUNNELL,
Judge of the District Court for the Territory of
Alaska, Fourth Division, GREETING:

Because in the record and proceedings, as also in the rendition of the verdict, sentence and judgment, of a plea of which is in said District Court, before you, between the United States of America, plaintiff, and W. H. Wooldridge, defendant, manifest

error has happened to the great prejudice and damage of the defendant, W. H. Wooldridge, as is said and appears by the petition herein.

We, being willing that said error, if any have been, should be duly corrected, and full speedy justice done to the parties aforesaid, in this behalf, do command you if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, together with this writ, so that you have the same in said Circuit on the second day of June, A. D. 1916, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct those errors what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States this third day of May, A. D. 1916.

Attest my hand and seal of the District Court for the Territory of Alaska, Fourth Division, on the day and year last above written.

[Seal]

J. E. CLARK,
Clerk District Court for the Territory of Alaska,
Fourth Division. [669]

Allowed this third day of May, A. D. 1916.

CHARLES E. BUNNELL,
Judge District Court, Territory of Alaska, Fourth
Division.

Service of the above Writ of Error is hereby admitted this third day of May, 1916.

R. F. ROTH,
U. S. Attorney.

[Endorsed]: 708—Cr. United States of America, Plaintiff and Defendant in Error, vs. W. H. Wooldridge, Defendant and Plaintiff in Error. Writ of Error. [670]

Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States of America to
R. F. ROTH, United States Attorney for the
Fourth Division of the Territory of Alaska,
Greeting:

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Fourth Division, wherein the United States of America is the plaintiff and defendant in error, and W. H. Wooldridge is the defendant and plaintiff in error, to show cause, if any there be, why the sentence and judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the plaintiff in error in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the

United States of America, this third day of May,
A. D. 1916.

CHARLES E. BUNNELL,
Judge District Court, Territory of Alaska, Fourth
Division.

[Seal]

Attest: J. E. CLARK,
Clerk.

Service of the above Citation admitted this 3d day
of May, A. D. 1916.

R. F. ROTH,
United States Attorney.

[Endorsed]: 708—Cr. United States of America,
—ss. United States of America, Plaintiff and De-
fendant in Error, vs. W. H. Wooldridge, Defendant
and Plaintiff in Error. Citation. [671]

[Title.]

Order Extending Return Day on Writ of Error, etc.

Whereas it appearing from the records and files
in the said action that the Writ of Error and Cita-
tion in the above-entitled cause are made returnable
on the second day of June, A. D. 1916, and

Whereas, because of the delays and uncertainties
in the matter of the transmission and transportation
of mail matter between Fairbanks, Alaska, and San
Francisco, California, and

Whereas, the time at which said Writ of Error
and Citation are made returnable as aforesaid is in-
sufficient in which to prepare, copy and certify to
the same, and transmit the same to said city of San

Francisco, at which the same are made returnable, and,

Whereas, the said time is also insufficient in which to permit the clerk of the District Court of the Territory of Alaska, Fourth Division, to prepare, copy and certify to the transcript of the records in said cause, and to transmit the same to said City of San Francisco,

IT IS ORDERED that the time for making said return on said return on said Writ of Error and Citation, and the time of filing the said transcript in the above-entitled cause, be enlarged and extended until the first day of September, A. D. 1916.

CHARLES E. BUNNELL,
Judge of the District Court for the Fourth Division,
District and Territory of Alaska.

[Seal]

Attest: J. E. CLARK,
Clerk. [672]

Service of the above Order admitted this 11th day of May, 1916.

R. F. ROTH,
United States District Attorney.

Entered in Court Journal No. 13, page 555.

[Endorsed]: In the United States Circuit Court of Appeals, Ninth Circuit, at San Francisco, California. United States of America, Plaintiff and Defendant in Error, vs. W. H. Wooldridge, Defendant and Plaintiff in Error. Order Enlarging Return Day. [673]

[Title.]

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
Territory of Alaska,
Fourth Division,—ss.

I, J. E. Clark, Clerk of the United States District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of six hundred and seventy-three pages, numbered from 1 to 673, inclusive, constitutes a full, true and correct transcript of the record on writ of error in Cause No. 708, Criminal, entitled United States of America, Plaintiff, vs. W. H. Wooldridge, Defendant, wherein W. H. Wooldridge is plaintiff in error and the United States of America is defendant in error, and was made pursuant to, and in accordance with, the praecipe of the plaintiff in error filed in this action and made a part of this transcript, and by virtue of the citation issued in said cause, and is the return thereon in accordance therewith.

And I do further certify that the index thereof, consisting of pages i to iv, is a correct index of said transcript; also that the costs of preparing said transcript and this certificate, amounting to Two Hundred and Forty-seven and 25/100 Dollars has been paid to me by counsel for plaintiff in error in said action.

IN WITNESS WHEREOF I have hereunto set

my hand and affixed the seal of said Court, this 24th day of July, 1916.

[Seal]

J. E. CLARK,
Clerk of the District Court, 4th Div., Territory of
Alaska.

By Sidney Stewart,
Deputy Clerk.

[Title.]

Order Extending Return Day on Writ of Error, etc.

Whereas it appearing from the records and files in the said action that the Writ of Error and Citation in the above-entitled cause are made returnable on the second day of June, A. D. 1916; and

Whereas, because of the delays and uncertainties in the matter of the transmission and transportation of mail matter between Fairbanks, Alaska, and San Francisco, California; and

Where the time at which said Writ of Error and Citation are made returnable as aforesaid is insufficient in which to prepare, copy and certify to the same, and transmit the same to said City of San Francisco at which the same are made returnable; and,

Whereas the said time is also insufficient in which to permit the clerk of the District Court of the Territory of Alaska, Fourth Division, to prepare, copy and certify to the transcript of the records in said cause, and to transmit the same to said City of San Francisco;

IT IS ORDERED that the time for making said return on said return on said Writ of Error and Ci-

tation, and the time of filing the said transcript in the above-entitled cause, be enlarged and extended until the first day of September, A. D. 1916.

CHARLES E. BUNNELL,
Judge of the District Court for the Fourth Division,
District and Territory of Alaska.

[Seal]

Attest: J. E. CLARK,
Clerk.

Service of the above Order admitted this 11th day of May, 1916.

R. F. ROTH,
United States District Attorney.

Entered in Court Journal No 13, page 555.

[Endorsed]: Docketed. Original. No. 2839. In the United States Circuit Court of Appeals, Ninth Circuit, at San Francisco, California. United States of America, Plaintiff and Defendant in Error, vs. W. H. Wooldridge, Defendant and Plaintiff in Error. Order Enlarging Return Day.

[Endorsed]: No. 2839. United States Circuit Court of Appeals for the Ninth Circuit. W. H. Wooldridge, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Fourth Division.

Filed August 9, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.